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SUPREME COURT OF THE UNITED STATES.

No. ~~341~~ 112

THE AMOSKEAG MANUFACTURING COMPANY, APPELLANT,

vs.

DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, AND EDWARD TRAINER, TRADING AS D. TRAINER & SONS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED FEBRUARY 27, 1877.

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1 In the circuit court of the United States, in and for the eastern district of Pennsylvania, April session, 1872.

THE AMOSKEAG MANUFACTURING COMPANY *vs.* DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, and Edward Trainer, trading as D. Trainer and Sons. } No. 32. In equity.

Pleas before the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of April session, 1872, No. 32.

It is thus contained:

Be it remembered that heretofore, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and seventy-two, came The Amoskeag Manufacturing Company, by their solicitor, George M. Dallas, esquire, and filed of record in our said court here its bill of complaint against David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer and Sons, which said bill being read, is in the words and tenor following, to wit:

2 In the circuit court of the United States for the third circuit.

THE AMOSKEAG MANUFACTURING COMPANY *against* DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, and Edward Trainer, trading as D. Trainer & Sons. } In equity.

To the honorable the judges of the said court:

The Amoskeag Manufacturing Company, a corporation duly incorporated for manufacturing purposes, by the State of New Hampshire, and a citizen of the said State, bring this their bill of complaint against David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, citizens of the State of Pennsylvania, copartners, trading as D. Trainer & Sons.

Thereupon the said The Amoskeag Manufacturing Company, complaining, say:

I. That they are a corporation duly incorporated for manufacturing purposes by the State of New Hampshire, and a citizen of the said State, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer are citizens of the State of Pennsylvania, and are copartners, trading under the firm-name of D. Trainer & Sons.

II. Your orators for many years past have been very extensively engaged in the manufacture of cotton fabrics, and amongst others, of goods known as ticking, and in vending the same in large quantities, and to a very considerable extent throughout the United States.

III. Your orators commenced the manufacture of ticking at their mills located at the Amoskeag Falls, in the State of New Hampshire, prior to the year 1834. In the year 1834, and during the latter portion of that year, your orators introduced an improvement into the manufacture of ticking, by which they were enabled to and did furnish and supply to the trade and the public a new and improved article of ticking. Prior to the introduction of the improvement just referred to, your orators

had marked the ticking manufactured and sold by them by placing thereon a label, upon which was printed or engraved the corporate name of your orators, combined with other devices and designs, and lettered with the letters A or B, respectively, to distinguish the first and second qualities of their ticking, and they still continue to manufacture ticking other than that made by the improved process of manufacture hereinbefore referred to, and place thereon a ticket or label containing, amongst other things, the corporate name of your orators, together with the letters either A, B, C, or D, to designate the several different grades
3 of excellence of their said goods. Your orators annex hereto as exhibits, marked I, II, III, and IV, respectively (which they pray may be taken as part hereof), specimens of the ticking (other than the improved ticking aforesaid) manufactured by them, with the appropriate label upon each.

IV. In the year 1834, upon the introduction of the aforementioned improvement in the manufacture of ticking, by which, as aforesaid, your orators introduced to the trade and the public a new and improved article of these goods, they became desirous, and did intend, to adopt an appropriate and distinguishing device and trade-mark for their said improved article of ticking, and for that purpose did adopt, and were the first and original users of the device or mark hereinafter next described, and, in pursuance of such desire and intention, each piece of their said ticking, from the first period of its manufacture and introduction as aforesaid, until the present time, continuously, has had placed thereon a label or ticket containing, amongst other things, the corporate name of your orators, and the letters A C A plainly and conspicuously printed in about the centre thereof; and to assure the character and reputation of their said improved ticking, so marked as aforesaid, your orators make a special and more than ordinary inspection of each piece of their said ticking before permitting it to be so marked.

Annexed hereto as an exhibit, marked V, is a piece of the aforesaid improved ticking of your orators, with a label thereon, which is a true specimen of the label containing the letters A C A, as it was used by your orators as early as the year 1837, and prior thereto. Subsequently a label substantially the same (a specimen of which is hereto annexed marked VI) was for a time used, in lieu of that of which Exhibit V is a specimen. In 1848 the manufacture of this improved ticking was transferred from your orators' mills, at Amoskeag Falls (then destroyed by fire), to their mills in the immediate vicinity, viz, at Manchester, New Hampshire; and in two or three years after said removal the A C A label was altered by adding thereto the words and figures A. D. 1836, and by substituting the word Manchester for the words Amoskeag Falls, but the letters A C A were carefully retained as before, and the said label (so altered), a copy whereof is hereto annexed marked VII, has since been continuously used, and is now used by your orators, upon their said improved ticking, and upon no other ticking whatsoever. Your orators pray that the several exhibits last mentioned and referred to may be taken as a part of this their bill.

V. Your orators further show that the letters A C A, as they appear in Exhibits V, VI, and VII, are an arbitrary selection and arrangement of those letters originally adopted and used by your orators, with the intention and for the purpose hereinbefore stated, and that the ticking which has been so marked by your orators has been and is manufactured by them on a very large scale; and by means of the care, skill, and fidelity with which your orators have conducted the manufacture thereof, for a long series of years as aforesaid, their said A C A ticking has ac-

quired a great reputation with the trade throughout the United States, and very large quantities thereof are constantly required from your orators to supply the regular demand.

VI. Your orators further show that the said ticking is known and distinguished by the trade and public as A C A ticking, and that it is so known and designated by large numbers of persons who purchase
4 ticking, and who in designating and calling for it as A C A ticking, assume and rely upon the assumption that in so designating they are distinguishing it from every manufacture of ticking other than the original and genuine A C A ticking of your orators, and so generally has this designation become known and adopted by the trade and the public, as the exclusive mark of this particular ticking, that many purchasers of ticking who would not be able to say by whom said genuine A C A ticking is manufactured and first sold, constantly call for and order it under the name of A C A ticking.

VII. Your orators further show unto your honors, that ticking of the same general appearance as the A C A ticking of your orators has been and is manufactured and sold, and offered for sale, by the said defendants, D. Trainer & Sons; and your orators are informed and believe that the said defendants, disregarding the rights of your orators, and fraudulently designing to procure the custom and trade of persons who are in the habit of vending or using the said genuine A C A ticking of your orators, and to induce them and the public to believe that the ticking manufactured by said defendants is the said genuine A C A ticking, have extensively manufactured, or have caused to be manufactured for them, and have sold and offered for sale, or caused to be sold or offered for sale for them, large quantities of ticking, upon which they have placed or caused to be placed a ticket or label containing the words and letters "Omega A C A Ring Twist," with the letters A C A placed in about the center thereof in large and conspicuous characters. A specimen of said label or ticket is hereto annexed as an exhibit, marked VIII, which your orators pray may be taken as a part of this bill.

VIII. The defendants pretend that they have a right thus to use the letters A C A upon their label or ticket, and in the order of arrangement first adopted by your orator as aforesaid, inasmuch as they claim that in so doing they designate only the quality or grade of their own ticking, and that the said combination and arrangement of letters is not a distinguishing mark of or for the aforesaid ticking of your orators, but is merely a designation by which the best quality of the ticking of any manufacturer may be distinguished from that of a less perfect grade of the same manufacturer's ticking. But your orators deny that such is the fact, and aver that such use of the said sequence of letters by the defendants is likely and obviously intended to deceive purchasers into the belief that the ticking upon which it is used by them is of the manufacture of your orators, and that it is used by the said defendants as aforesaid with the fraudulent design and intent of appropriating to themselves the profits of the business of your orators in the sale of their said tickings. And your orators, moreover, charge that this conduct of the defendants is none the less wrongful and unlawful, because the original and continued appropriation and user by your orators of their said mark has been confined by them to their improved and best grade of ticking; and they further charge, and respectfully submit, that if, in adopting such a wholly arbitrary, unusual, and original method of marking a portion of their goods, your orators had it in view to designate them not only as of their own, but also as of their best manufacture, that

fact would not justify the defendants in taking and appropriating the same mark, even for a similar purpose, and that their wrongful intention in so appropriating it is apparent from the fact that whilst to your orators its original adoption was naturally suggested by the fact that it is composed of the initials of their corporate name, viz, Amoskeag Company, with the letter A added as a designation of best quality, there is nothing whatever but the reputation which the excellence of the goods of your orators had acquired for the said mark to suggest its appropriation by the defendants.

IX. Your orators further show unto your honors that they have not ascertained the full or precise extent to which the said defendants have carried their appropriation and use of the said A C A mark of your orators; but your orators have been informed and believe that the defendants' ticking, fraudulently marked as aforesaid, has been and is offered for sale, to a large extent, in various places in the United States, with the intent, as your orators believe, that the same shall be accepted, received, and used by the trade and public as the genuine A C A ticking of your orators.

X. Your orators further show that the said fraudulent and inequitable conduct of the defendants is not only injuring your orators in the sale of their said ticking, and the profits which they would otherwise reasonably make thereon, but by reason of the inferior quality of the defendants' ticking is greatly prejudicing the reputation of your orator's said genuine ticking in the market, and is a fraud and deception upon such of the citizens of the United States as purchase defendants' ticking, believing it to be that of your orators.

In consideration whereof, and forasmuch as your orators are remediless at law, and cannot have adequate relief, save by the interposition of a court of equity, to the end, therefore, that the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several corporal oaths, and according to the best and utmost of their and each of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, viz:

1. Whether the Amoskeag Manufacturing Company is a corporation, incorporated by the State of New Hampshire, and a citizen of that State?

2. Whether the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, or any and which of them, are citizens of the State of Pennsylvania, and if not, of what State are they, and each of them, citizens?

3. Whether or not have the Amoskeag Manufacturing Company, for many years past or for any and what length of time been extensively, or to any and what extent, engaged in manufacturing ticking, known in the market as A C A ticking?

4. Have the Amoskeag Manufacturing Company been engaged in vending their A C A ticking throughout the United States or in any and what localities, therein and elsewhere, and how has said A C A ticking been marked? Does it still continue to be so marked? Were not the Amoskeag Manufacturing Company the original or first users of the mark A C A? If not, who used it before them?

5. Have not the said Amoskeag Company, in the manufacture of ticking marked A C A, acquired a great reputation throughout the United States?

6 6. Has not the A C A ticking of the Amoskeag Company been long known to the trade and the public as A C A ticking, and is it not so known now?

7. Were not the Amoskeag Manufacturing Company the original manufacturers of ticking marked or labeled as aforesaid, and the first to introduce the same to the public?

8. Whether or not the said D. Trainer & Sons have manufactured or caused to be manufactured for them, or sold or caused to be sold for them, in Philadelphia or elsewhere, and where, and in what quantity, ticking upon which they have placed or caused to be placed a ticket or label with the letters A C A placed conspicuously thereon? Is not Exhibit VIII annexed to this bill a correct specimen of the label so employed and used by the defendants, and, if not, in what particular or particulars is it incorrect? Annex to your answer hereto a full, particular, and minute statement of the quantity of ticking you have manufactured or caused to be manufactured for you, or have sold or caused to be sold for you, having thereon the mark "A C A," either alone or in connection with any other letters, words, phrases, design, device, or mark.

And that the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer and their and each of their attorneys, agents and servants, may be enjoined and restrained from manufacturing, or causing to be manufactured, selling or offering for sale, and from having sold or offered for sale for them, directly or indirectly, any ticking manufactured by them or by any person, other than your orators, having stamped or printed or painted or at[illegible]ed or pasted thereon the letters A C A, in the sequence or order [illegible]y are just set forth, or having any label, printing, or devi[illegible]ch manner as to be a colorable imitation or simulation of your [illegible]id trade mark, or calculated to deceive purchasers into the be[illegible]he ticking, having any such label, printing, or device thereon is of the manufacture of your orators, and that the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer & Sons, may be decreed to account to your orators for all the profits which they have made by the sale of ticking having thereon the letters A C A in the order or sequence aforesaid, and for all the profits which your orators would have made on the sale of their genuine A C A tickings but for the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer's inequitable, wanton, and piratical appropriation and imitation of your orators' said mark, and that the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer may be decreed to produce and deliver up for the obliteration of their said fraudulent imitation of your orators' said mark, all the ticking within their possession, custody or control, upon which the same may be printed, painted, written, stamped, attached, or pasted, and that your orators may have such further and other relief as to your honors shall seem meet.

May it please your honors to grant unto your orators a writ of injunction, issuing out of and under the seal of this court, to be directed to the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, their and each of their attorneys, agents, and servants, therein and thereby commanding and enjoining them under a certain penalty according to the foregoing prayer of your orators.

May it also please your honors to grant unto your orators a writ
7 of subpœna, issuing out of and under the seal of this court, to be directed to David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, commanding them on a certain day, and under a

certain penalty, personally to be and appear before this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein as to your honors shall seem meet.

GEORGE M. DALLAS,
Solicitor for Complainants.

Each of the defendants, David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, is required to answer all the foregoing interrogatories numbered from one to eight inclusive.

GEORGE M. DALLAS,
Solicitor for Complainants.

And afterwards, to wit, on the day and year last aforesaid, a subpœna was issued which, with the endorsement and return thereto, is in the words following, to wit:

8 UNITED STATES,
Eastern District of Pennsylvania, sct.:

The President of the United States to David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer and Sons:

For certain causes offered before the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, we command and strictly enjoin you, and each of you, that laying all other matters aside, and notwithstanding any excuse, you and each of you personally be and appear before the judges of the said court, at a session of the same court to be holden at Philadelphia on the first Monday of July next, to answer and [illegible]ing those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this sixteenth day of May, 1872, and in the ninety-sixth year of the Independence of the said United States.

[SEAL.]

JOHN B. BEAVER,
Pro. Clerk of Circuit Court, U. S.

NOTE.—The defendants in this case are required to enter their appearance in the clerk's office of said court on or before the first Monday of July next; otherwise the bill may be taken pro confesso.

9 Service is hereby accepted for defendants, for whom proth'y will please enter our appearance.

SAML. DICKSON.
J. C. BULLITT.

(Indorsed:) No. 32. Circuit court, April sess. 1872. The Amoskeag Manufacturing Company vs. David Trainer et al. Subpœna in equity. Returnable on the first Monday of July next. Geo. M. Dallas, solicitor for complainant. $2.40. Filed 6th June, 1872.

10 And afterwards, to wit, on this twenty-sixth day of November in the year of our Lord one thousand eight hundred and seventy

two, the said David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, the defendants aforesaid, by Samuel Dickson and John C. Bullitt, esquires, come into our said court here and file their answer to the aforesaid bill of complaint, which, being read, is as follows, to wit:

Answer.

In the circuit court of the United States for the third circuit.

THE AMOSKEAG MANUFACTURING COMPANY
vs.
DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, and EDWARD TRAINER, trading as D. Trainer & Sons. } In equity.

The joint answer of David Trainer, J. Newlin Trainer, and Edward Trainer to the bill of complaint of complainants.

I. We have been informed that the complainants are a corporation duly incorporated by the State of New Hampshire for manufacturing purposes, and citizens of said State; but we know nothing of the facts from our own knowledge, and crave that for greater certainty complainants be required to prove the same.

II. We believe the allegations of paragraph II of the bill to be substantially correct.

11 III. The defendants, of their own knowledge, do not know whether the allegations in paragraph III of their bill are correct or not, and for greater certainty request that the complainants be required to prove the same. They have been informed that the complainants have manufactured goods for a long period, but as to the exact period and method of marking the different qualities of their ticking they have no accurate knowledge of their own.

IV. The defendants do not know at what exact time the complainants placed upon their goods the letters A. C. A., or the facts connected with the alteration of the same, as set forth in paragraph IV, or the change of place of manufacture and substitution of "Manchester" for "Amoskeag Falls." They believe, however, Exhibit VII to be a correct copy of the label. They believe the allegations to be substantially correct, except that they deny expressly that the complainants ever adopted as a trade-mark the letters A. C. A., as set forth in paragraph IV of the bill. They allege that the letters so used were simply a designation for a new quality of the ticking manufactured by the company, in the same manner and with like effect as the letters A, B, C, D were used by the complainants to designate other qualities of ticking, as set forth more fully in paragraph III of their bill. The defendants believe the copy of the label, as set forth in Exhibit VII of the bill, is a true one, but crave leave, for greater certainty, that the label itself shall be produced.

V. The defendants deny that the letters A. C. A. so used were placed upon the goods with intention and for the purpose of a trade-mark. They deny absolutely that the letters so used point out in any manner distinctively the origin or ownership of the article to which they were affixed, or that they give notice in any manner whatever who was the producer of the goods. They allege, as before stated, that the letters are simply *and* used to designate one of the grades or quality of ticking manufactured by the Amoskeag Company, in the same manner and

with like effect as vessels are rated in the United States as A 1, A 1½, A 2, or in England, at Lloyd's, as AA, etc. They further show to your honorable court that in the year 1849, twelve years after the time the said alleged trade-mark is claimed to have become the property of the complainants, the said complainants commenced a suit substantially identical in all respects with this, except as to the defendant parties, alleging their property in the above-mentioned label, with the letters A. C. A. so used as aforesaid, and asking the supreme court of the State of New York to enjoin the defendants in that case from the use of the same. (Amoskeag Co. vs. Spear, 2 Sand., S. C., 566.) The defendants further allege that it was there expressly decided by the said court that the said use of the letters with the corporate name of the company was in no sense of the word a trade-mark, but simply a designation of the quality or grade of the goods. And they further allege that this case has become recognized as a leading case throughout the United States, and has been so adopted by the Supreme Court of the United States in the case of Delaware and Hudson Canal Co. vs. Clark (13 Wallace, 311), where it is designated by his honor, Mr. Justice Strong, as a "well-considered case," and the law as applied to the label and letters used by the complainants stated to be correct, and the opinion cited from at length, and the said case has been generally followed by other courts throughout the United States. The defendants further allege that the decision in the above case of Amoskeag Co. vs. Spear is in the nature of a proceeding in rem, so that, even if it were incorrectly decided, as a question of principle, it has given conclusive notice to all the world that the said combination was common property, and meant nothing but a particular grade or quality, and as such is binding absolutely on the complainants as well as all purchasers of goods and the public at large. The defendants believe the said ticking has been sold to a large extent throughout the United States, but only as the ticking of the Amoskeag Manufacturing Company as distinguished from that of other manufacturers, the said letters A. C. A. designating the grade or quality.

12 VI. The defendants deny that the ticking is known as A. C. A. ticking, as marking in any sense the origin or ownership of the goods, as alleged in paragraph VI. of the bill, but only as necessary to distinguish the grade or quality of the ticking. And they deny that persons assume and rely, in so designating it, that they are distinguishing it from every other ticking other than the genuine A. C. A. ticking of the complainants, or that this designation has become so generally known and adopted by the trade and public as the exclusive mark of this particular ticking that many purchasers of ticking, who would not be able to say by whom said A. C. A. ticking is first sold, constantly call for and order it under the name of "A. C. A." ticking; but, on the contrary, they allege that the goods, when called for under that name, are only used to designate the quality or grade, and that the name of the manufacturer, unless that is assumed by reason of the fact that the seller is an agent, or something similar, is superadded to distinguish what goods are meant.

VII. The defendants deny that the ticking, as marked by them, has the same general appearance as ticking marked by the complainants, or that in any way, fraudulently or otherwise, they have attempted to procure the custom or trade of the complainants by any use of a similar design or label, or to induce any person to believe that the ticking manufactured by the defendants is the ticking of the complainants, marked A. C. A., or otherwise. They admit that they have manufactured and

sold large quantities of ticking with a mark or label to designate the quality or grade of the goods (a copy of which is hereto annexed, marked Exhibit A), with the letters as stated in paragraph VII. of complainants' bill, but they deny that the letters used designate any other thing than the quality or grade of the goods, or that they are calculated to deceive the public or purchasers into the belief that they are complainants' goods. On the contrary, they are just as jealous of their reputation as the plaintiffs, and as much rely upon it to secure the sales of their goods. The distinctive name of their goods is "Omega Twist," and the general style and appearance of their packages are entirely different from those of plaintiffs' goods. Some of their goods bear the fac simile of the medal awarded to "David Trainer," and all of them bear the label "Omega," so that every purchaser has notice of the origin of the goods. They allege further that said letters have been used by the defendants for over years; that the demand for their goods in Philadelphia is far greater than that for complainants' goods, which are only sold through their agent in Philadelphia, while the defendants' goods are known well to the public at large. They further allege that they commenced, and have continued to use the said letters after the decision in Amoskeag Company vs. Spear, relying not only upon the fact that there was not the slightest imitation or liability to deceive anybody in point of fact, as will be seen from what has been before stated; but also that the said decision, acted upon by all the courts throughout the United States, gave notice to everybody that the said letters were simply used to indicate the grade of those goods. They further allege that during the five years that they have been extensively using the letters to designate the quality or grade of their goods, they have never received any complaint whatever from the complainants; but, on the contrary, they have acquiesced in the said sales of goods and use of said letters, and the defendants claim that, if no other reason existed, they would be estopped by reason of their laches and supineness from attempting now to set up against the defendants the fact that the use of said letters is in any sense the imitation of any trade-mark of complainants.

VIII. The defendants do not pretend, but assert positively, that they use the said letters only to designate the grade or quality of their goods, and they deny absolutely that such use is likely to deceive or intended to deceive purchasers as stated in paragraph VIII. of the bill. They deny positively any fraudulent design or intent to induce persons to believe that their ticking is that of the complainants, or any fraudulent intent to injure the complainants, either in their business or otherwise.

They deny further all the allegations that said letters were used
13 for the purposes mentioned by complainants, but simply as a convenient way—as in lettering the grade of vessels, as before stated —to mark the grade of goods.

IX. The defendants admit that they have made large sales of goods marked, to distinguish quality or grade, with letters A. C. A., and admit that it is now so offered for sale; but deny that it is in any sense fraudulently marked, or marked indeed in any way to deceive purchasers or the public into the belief that the goods are those of complainants.

X. The defendants deny that their conduct is in the slightest degree fraudulent or inequitable; and further, they deny that the sale of their goods is injuring in any way that of complainants, except so far as would arise from the natural effects of competition between manufacturers; and they allege that not only are the defendants' goods not inferior to those of complainants, but they assert that they are superior, as is shown by the fact of the greater demand for them in this market. They finally

deny, in every way, all allegations that the sale or attempted sale of defendants' goods is in any way a fraud or deception upon citizens of the United States or any other persons whatever.

And for answer to the several interrogatories of complainants, the said defendants, answering, say—

To the first interrogatory: They believe the Amoskeag Manufacturing Company is a corporation, but know nothing in reference to the matter of their own knowledge.

To the second interrogatory: The said David Trainer, J. Newlin Trainer, and Edward Trainer are citizens of the State of Pennsylvania.

To the third interrogatory: They believe that the Amoskeag Manufacturing Company has been manufacturing ticking to a large amount, but to what extent they are utterly unable to state, as they do not know. One of the grades or qualities of said ticking so manufactured by the company is known as an A. C. A. ticking of the Amoskeag Manufacturing Company, marking the grade or quality.

To the fourth interrogatory: The defendants believe that the Amoskeag Manufacturing Company have been engaged in vending what they call their A. C. A. ticking throughout the United States, but they are not able to state particularly in what localities therein or elsewhere. They know that it has been sold in Philadelphia and others of the large cities of the United States. Some of the ticking has been marked with the letters "A. C. A.," while others have been marked "A" or "B" or "C" or "D," according to the grade or quality with the name of the said company and the place (Manchester) marked thereon in addition. They believe that it still continues to be so marked; they believe that the said company were the original or first users of the letters "A. C. A.," but they do not know positively that such is the fact.

To the fifth interrogatory: They believe that the said company has acquired a reputation in the manufacture of their ticking, but do not believe that it can be called a great reputation; nor do they know that the reputation is confined at all to their "A. C. A." ticking, but is equally shared by all their goods, and it is the highest or best grade or quality of their ticking that is so designated, which is purchased only by persons when they desire that particular grade or quality, in the same way that they purchase that marked A, B, C, D., respectively—the above letters marking the grade or quality in a manner similar to that of rating vessels.

To the sixth interrogatory: The A. C. A. ticking has been known to the trade as the A. C. A. ticking of the Amoskeag Manufacturing
14 Company, and it is not now, and has not been, known in any other way; but, as before stated, is merely a grade or quality of the ticking of said company.

To the seventh interrogatory: They answer in the affirmative, with the qualifications before stated.

To the eighth interrogatory: The said D. Trainer & Sons have manufactured and sold, or caused to be sold in Philadelphia and elsewhere, ticking upon which they have placed the letters A. C. A., to mark the grade or quality, just as they have used A, B, C, D, respectively, to denote other grades or qualities. Exhibit VIII., said to be annexed to the bill, has not been seen by defendants; but Exhibit A of the answer is a correct copy of their label, and is in all respects, except the use of the letters to mark the grade or quality as before stated, dissimilar from that of complainants' labels. The general style and character of their packages are so unlike those of the complainants' that no one, it is believed, could mistake the one for the other; as stated

in the answer, that which distinguishes their goods from those of other manufacturers is the name "Omega Twist," and Exhibit B shows that their label bears the name of the senior member of the firm, so that no one can mistake the origin and ownership of the goods manufactured by them. The defendants are advised that it is not necessary for them to set forth in detail the quantity of ticking manufactured or sold by them, either with the letters A. C. A., or any other letters, words, designs, devices or marks, and therefore decline to answer this part of the interrogatory; but they state to the court, that while declining to do so, from the belief that it is not proper at this stage of the proceedings, and they cannot be so compelled, yet nevertheless, if the court should think otherwise, they are ready and willing to give a full, complete, and accurate account of all the ticking manufactured or sold by them with the letters A. C. A. placed upon it, as described in this interrogatory.

All which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable cost and charges, in this behalf most wrongfully sustained.

(Signed) DAVID TRAINER & SONS,
Defendants.

SAMUEL DICKSON,
J. C. BULLITT,
Of Counsel with Defendants.

CITY OF PHILADELPHIA, *ss:*

J. Newlin Trainer, being duly sworn according to law, doth depose and say that the matter and things in the foregoing answer contained, so far as they are stated of his own knowledge, are true, and so far as on the information of others he believes them to be true.

(Signed) J. NEWLIN TRAINER.

Sworn to and subscribed before me this twenty-second day of October, A. D. 1872.

WM. McGEORGE, JR.,
Notary Public.

15 And afterwards, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, the said Amoskeag Manufacturing Company, the complainant, by George M. Dallas, esquire, its solicitor, comes into our said court here and files his replication, which, being read, is in the words and of the tenor following, to wit:

Replication.

AMOSKEAG MANUFACTURING COMPANY }
vs.
D. TRAINER ET AL. }

The replication of the Amoskeag Manufacturing Company, plaintiffs to the answer of D. Trainer et al.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered

unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

16

GEO. M. DALLAS,
For Complainants.

(Endorsed:) 32 April sess., 1872, U. S. Amoskeag M. Co. vs. Trainer et al. Replication. Filed 26 November, 1872. Dallas.

17 Afterwards, to wit, on the tenth day of September, in the year of our Lord one thousand eight hundred and seventy-three, the complainant, by its solicitor George M. Dallas, esquire. comes into court here and presents interrogatories sur commission to Cincinnati, Ohio, which interrogatories being read and filed, are in the words and of the following tenor, to wit:

In the circuit court of the United States, for the third circuit. April sessions, 1872. Number 32.

THE AMOSKEAG MANUFACTURING COMPANY
against
DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER and EDWARD TRAINER, copartners, trading as D. Trainer & Sons. } In equity.

Interrogatories in chief sur plaintiffs' rule for a commission to Cincinnati, Ohio.

1. What is your name?
2. Where do you reside?
3. How long have you lived there?
4. What is your business?
5. How long have you been in such business, and who are your partners in it, if any; or by what person, firm or corporation are you employed, and in what capacity?
6. Do you, or your firm, or your employer or employers, purchase and sell tickings in the course of your, or his, or their business?
7. Have you, in the course of your business, or of that of your employer or employers, become acquainted with any ticking labelled or lettered with a label, ticket, or card, having upon it alone, or in connection with any other, and what device, words, letters, or figures, the letters A C A? Please annex to your answer a specimen of any such card, ticket or label, together with a specimen of the ticking from which you may take such specimen label.

18 8. Have you, in the course of your business, or of that of your employer or employers, met or become acquainted with more than one, and how many, labels, tickets, or cards, used upon ticking, and having thereon, either alone or in connection with any other, and what device, words, letters, or figures, the letters A C A? If you answer that you have met or become acquainted with more than one such label or ticket, please annex a specimen of each thereof, together with a

specimen of the ticking upon which said label or ticket had been pasted or attached, to your answers hereto.

9. Please state as far as you can of your own knowledge by what person, firm, or corporation each of the tickings, of which you may annex specimens as requested in the two preceding interrogatories, was manufactured and originally sold, and from whom you, or your firm, or your employer or employers, purchased the same? Was each of said tickings, and if not all, but some of them, then which of them, purchased by you, or your employers, in the course of your or their business, as merchants, or otherwise, and how?

10. Please state the belief of yourself and of others who deal in tickings in your locality as to the person or persons or corporation or corporations by which each and all of the tickings marked with the letters A C A have been and are manufactured?

11. Please mention the order in which you became acquainted with the different tickings, if more than one, marked with the letters A C A, and state, as nearly as you can, the date at which you first met or became acquainted with each of said tickings respectively.

12. Please state the reputation amongst those who deal in tickings, and with the public and purchasers thereof, of tickings having upon them the letters A C A. Have the several tickings, if more than one, which are marked A C A separate and distinct reputations as to quality with those persons who deal in them in your locality? If so, please state the reputation of each, identifying them respectively by reference to the specimens which you may annex to your answers hereto. Have the tickings so marked separate reputations as to quality with the public and amongst purchasers thereof? If so, please state such reputation of each respectively, identifying each ticking as referred to in the manner just indicated.

13. Please state which of said tickings is of the best quality and in what its superiority consists.

14. Do or do not purchasers who desire to buy tickings marked with the letters A C A ask for or describe them as of any particular manufacture, or grade, or quality of goods, or as A C A tickings simply?

15. How do those persons who deal in tickings describe or designate the article which they desire when they intend to purchase tickings marked with the letters A C A? How do they designate or describe the article (if differently) when intending to purchase ticking marked with each of the labels or tickets of which you may annex specimens to your answers? Please answer separately as to the several tickings marked with each of said labels or tickets respectively.

19 16. How do consumers who purchase tickings describe or designate the article which they desire when they intend to purchase tickings marked with the letters A C A? How do they designate or describe the article (if differently) when intending to purchase ticking marked with each of the labels or tickets of which you may annex specimens to your answers? Please answer separately as to the several tickings marked with each of said labels or tickets respectively.

17. If you or merchants in your locality should, in ordering tickings from a jobber or wholesale dealer therein, describe the tickings you or they wished to purchase as "A C A ticking" merely, what manufacture of ticking would be intended and understood, and what would be the full label which you would expect to find upon such ticking?

18. If a consumer who desired to purchase from you or from any merchant or dealer in your locality should ask for "A C A ticking"

merely, what manufacture of ticking would you understand him to mean, and what would be the full label or ticket upon such ticking?

19. Do or do you not know, and have or have you not, and for how long, known A C A ticking as the distinguishing designation of a certain article of ticking in the market? If so, state to the extent of your knowledge what ticking has been and is so designated, and by whom manufactured.

20. Do or do not merchants and dealers in ticking, and purchasers and consumers thereof in your locality designate, and have or have they not, and for how long, been accustomed to designate a particular, and what ticking, and (if you know) of whose manufacture, as "A C A ticking"?

21. Please state the extent of your experience, if any, in selling tickings marked with the letters A C A. If you have had such experience, then state whether, in your opinion, the public and purchasers of ticking desiring to purchase tickings of the kind having any one of the labels annexed to your answers thereon might readily be led to believe that the label upon any other of the tickings was the same as that used upon the particular ticking which he or she might desire to buy? Please answer this interrogatory in detail, and with careful and minute reference to each and every label or ticket used upon tickings, and having the letters A C A thereon.

22. If you have answered that you have had experience in the sale of tickings marked with the letters A C A, then state (if you have not already done so) whether you have seen ticking marked with the label of the complainants in this case, containing, amongst other things, the words Amoskeag Manufacturing Company, and the letters A C A, and also whether or not you have seen a ticket or label upon ticking containing the words and letters Omega, A C A Ring Twist? If so, state whether, in your opinion, the public and purchasers of tickings desiring to purchase ticking of the manufacture of the complainants in this suit, as marked with the label first mentioned in this interrogatory, might or might not be readily led to believe that the ticking marked as last described in this interrogatory was that manufactured by the complainants and marked as first mentioned in this interrogatory?

23. Please state fully, minutely, and at large every other matter, fact, and circumstance within your knowledge relevant and pertinent to this case.

GEO. M. DALLAS,
JAMES E. GOWEN,
For Plaintiffs.

Plaintiffs nominate as commissioner Clement Bates, esq., of Cincinnati, Ohio.

GEO. M. DALLAS.

20 And afterwards, to wit, on the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-three, the defendants, by their solicitor, Samuel Dickson, esquire, filed exceptions to the interrogatories in chief sur commission to Cincinnati, Ohio, which exceptions are in the words following, to wit:

In the circuit court of the United States for the third circuit. In equity.
April s's. No. 32. 1872.

AMOSKEAG MANUFACTURING CO.
vs.
TRAINER.

Exceptions on the part of def'ts to interrogatories in chief sur plff's' rule for a commission to Cincinnati, Ohio.

To the tenth interogatory def't excepts because it is a question as to the opinion of the witness or witnesses and his or their opinion of others' opinions as to facts which should be directly proved.

21 To the twelfth interrogatory def't excepts because it is vague, uncertain, and based entirely upon the opinion of the witnesses.

To the sixteenth interrogatory, because it is vague, hypothetical, and not connected with the facts of the cause.

To the seventeenth interrogatory, because it is hypothetical, based upon the opinions of the witness or witnesses merely.

To the eighteenth interrogatory, because it is hypothetical and hearsay, being based upon the opinion of the witnesses, merely.

To the nineteenth, because it is leading and designed to secure the opinion of the witness upon a question of law involved in the case.

To the twenty-first interrogatory, because it is based upon the opinion of the witness or witnesses merely, and is vague and uncertain.

To the twenty-second interrogatory, because it is leading and based upon the opinion of the witness or witnesses.

S. DICKSON,
Per E. G. P.

SEPT. 24, 1873.

22 (Endorsed:) U. S. C. C. No. 32. April sess., 1872. Amoskeag Manu'g Company vs. Trainer. Exceptions to interrogatories in chief, &c. Filed 25 September, 1873. Dickson.

Whereupon afterwards, to wit, on the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and seventy-three, it it ordered by the court that the exceptions by defendants to interrogatories in chief sur commission to Cincinnati, Ohio, be dismissed except as to tenth (10) interrogatory, for which leave is granted to amend as follows, to wit:

10. Please state your belief as to the person or persons, or corporation or corporations, by which each and all of the tickings marked with the letters A C A have been and are manufactured.

And afterwards, to wit, on the twelfth day of November, in the year of our Lord one thousand eight hundred and seventy-three, the defendants, by their solicitor, came into court here and present cross-interrogatories sur commission to Cincinnati, Ohio, which cross-interrogatories, being read and filed, are in the words following, to wit:

23 In the circuit court of the United States for the third circuit.
April sessions, 1872.

AMOSKEAG CO.
vs.
TRAINER. } No. 32.

Cross interrogatories on the part of the defendant to be propounded to witnesses to be examined on the part of the plaintiff.

I. Upon what do you base your statement as to the order in which

you became acquainted with the different tickets, or the date at which such acquaintance began? If you have any memorandum or written entry from which you testify, annex copies thereof.

II. Are you the agent of the Amoskeag Manufacturing Company? What is the nature of the arrangement for selling their goods, or otherwise? Is not all the information which you possess in reference to the subject-matter of the interrogatories addressed to you derived from your having been engaged as agent, or otherwise, in the sale of their *tickets*? If so, state what amount of business you have done for them.

III. In testifying as to what consumers or purchasers would "intend" and "understand" by particular labels or tickets, have you not been answering as to what you yourself would intend or understand if ordering tickings?

IV. If in answer to the twenty-second interrogatory you should state that the public and purchasers of tickings might confound the words "Amoskeag Manufacturing Company" with "Omego Ring Twist," please state in what locality you think such a mistake would be likely to occur, and among persons of what education; and whether, in point of fact, you have ever known such a mistake to have been committed; and if so, by whom?

V. Do you know of anything to the advantage of the defendant in this case not mentioned in your replies to the above cross-interrogatories and interrogatories on the part of the plaintiff, or anything to the disadvantage of the plaintiff? If so, please set forth the same fully and at length, as if specially interrogated herein.

S. DICKSON,
Pro Defendant.

24 And afterwards, to wit, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and seventy-three, the complainant, by its solicitor, comes into court here, and presents interrogatories sur commissions to Rock Island, Illinois; St. Louis, Missouri; Quincy, Illinois; Davenport, Iowa; Chicago, Illinois; Toledo, Ohio; Burlington, Iowa; Detroit, Michigan; Dubuque, Iowa; which, being read and filed, are in the words and of the tenor following, to wit:

25 In the circuit court of the United States for the third circuit, April sessions, 1872.

THE AMOSKEAG MANUFACTURING COMPANY *against* DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER and EDWARD TRAINER, copartners, trading as D. Trainer & Sons. } In equity. Number 32.

Interrogatories in chief sur plaintiffs' rule for a commission to

1. What is your name?
2. Where do you reside?
3. How long have you lived there?
4. What is your business?
5. How long have you been in such business, and who are your partners in it, if any; or by what person, firm, or corporation are you employed, and in what capacity?

6. Do you, or your firm, or your employer or employers, purchase or sell tickings in the course of your, or his, or their business?

7. Have you, in the course of your business, or of that of your employer or employers, become acquainted with any ticking labelled or lettered with a label, ticket, or card, having upon it alone, or in connection with any other, and what device, words, letters, or figures, the letters A C A? Please annex to your answer a specimen of any such card, ticket, or label, together with a specimen of the ticking from which you may take such specimen label.

8. Have you, in the course of your business, or of that of your employer or employers, met or become acquainted with more than one, and how many, labels, tickets, or cards, used upon ticking, and having thereon, either alone or in connection with any other, and what device, words, letters, or figures, the letters A C A? If you answer that you have met or become acquainted with more than one such label or ticket, please annex a specimen of each thereof, together with a specimen of the ticking upon which said label or ticket had been pasted or attached, to your answers hereto.

9. Please state as far you can of your own knowledge by what person, firm, or corporation, each of the tickings, of which you may annex specimens as requested in the two preceding interrogatories, was
26 manufactured and originally sold, and from whom you, or your firm, or your employer or employers, purchased the same? Was each of said tickings, and if not all, but some of them, then which of them, purchased by you, or your employers, in the course of your or their business, as merchants, or otherwise, and how?

10. Please state your belief as to the person or persons, or corporation or corporations, by which each and all of the tickings marked with the letters A C A have been and are manufactured.

11. Please mention the order in which you became acquainted with the different tickings, if more than one, marked with the letters A C A, and state, as nearly as you can, the date at which you first met or became acquainted with each of said tickings respectively.

12. Please state the reputation amongst those who deal in tickings, and with the public and purchasers thereof, of tickings having upon them the letters A C A. Have the several tickings, if more than one, which are marked A C A, separate and distinct reputations as to quality with those persons who deal in them in your locality? If so, please state the reputation of each, identifying them respectively by reference to the specimens which you may annex to your answers hereto. Have the tickings so marked separate reputations as to quality with the public and amongst purchasers thereof? If so, please state such reputation of each respectively, identifying each ticking as referred to in the manner just indicated.

13. Please state which of said tickings is of the best quality and in what its superiority consists.

14. Do or do not purchasers who desire to buy tickings marked with the letters A C A ask for or describe them as of any particular manufacture, or grade, or quality of goods, or as A C A tickings simply?

15. How do those persons who deal in tickings describe or designate the article which they desire when they intend to purchase tickings marked with the letters A C A? How do they designate or describe the article (if differently) when intending to purchase ticking marked with each of the labels or tickets of which you may annex specimens to

your answers? Please answer separately as to the several tickings marked with each of said labels or tickets respectively.

16. How do consumers, who purchase tickings, describe or designate the article which they desire when they intend to purchase tickings marked with the letters A C A? How do they designate or describe the article (if differently) when intending to purchase ticking marked with each of the labels or tickets of which you may annex specimens to your answers? Please answer separately as to the several tickings marked with each of said labels or tickets respectively.

17. If you, or merchants in your locality, should, in ordering tickings from a jobber or wholesale dealer therein, describe the tickings you or they wish to purchase as "A C A ticking" merely, what manufacture of ticking would be intended and understood, and what would be the full label which you would expect to find upon such ticking?

18. If a consumer, who desired to purchase from you or from any merchant or dealer in your locality, should ask for "A C A ticking" merely, what manufacture of ticking would you understand him to mean, and what would be the full label or ticket upon such ticking?

27 19. Do or do you not know, and have or have you not, and for how long, known A C A ticking as a distinguishing designation of a certain article of ticking in the market? If so, state to the extent of your knowledge what ticking has been and is so designated, and by whom manufactured.

20. Do or do not merchants and dealers in ticking, and purchasers and consumers thereof in your locality, designate, and have or have they not, and for how long, been accustomed to designate a particular, and what ticking, and (if you know) of whose manufacture, as "A C A ticking?"

21. Please state the extent of your experience, if any, in selling tickings marked with the letters A C A. If you have had such experience, then state whether, in your opinion, the public and purchasers of ticking, desiring to purchase tickings of the kind having any one of the labels annexed to your answers thereon, might readily be led to believe that the label upon any other of the tickings was the same as that used upon the particular ticking which he or she might desire to buy? Please answer this interrogatory in detail, and with careful and minute reference to each and every label or ticket used upon tickings, and having the letters A C A thereon.

22. If you have answered that you have had experience in the sale of tickings marked with the letters A C A, then state (if you have not already done so) whether you have seen ticking marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company, and the letters A C A, and also whether or not you have seen a ticket or label upon ticking containing the words and letters Omega A C A Ring Twist? If so, state whether in your opinion the public and purchasers of ticking, desiring to purchase ticking of the manufacture of the complainants in this suit, as marked with the label first mentioned in this interrogatory, might or might not be readily led to believe that the ticking marked as last described in this interrogatory was that manufactured by the complainants, and marked as first mentioned in this interrogatory?

23. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your exam-

ination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

GEO. M. DALLAS,
JAMES E. GOWEN,
For Plaintiffs.

Plaintiffs nominate as commissioner

GEO. M. DALLAS.

28 And afterwards, to wit, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and seventy-three, the defendants, by their solicitor, comes into court here and presents cross-interrogatories sur commissions to Rock Island, Illinois; St. Louis, Missouri; Quincy, Illinois; Davenport, Iowa; Chicago, Illinois; Toledo, Ohio; Burlington, Iowa; Detroit, Michigan; Dubuque, Iowa; which being read and filed, are in the words and of the tenor following, to wit:

29 In the circuit court of the United States for the third circuit.
April sessions, 1872.

AMOSKEAG CO. *vs.* TRAINER. } No. 32.

Cross-interrogatories on the part of the defendant to be propounded to witnesses to be examined on the part of the plaintiff.

I. Upon what do you base your statement as to the order in which you became acquainted with the different tickets, or the date at which such acquaintance began? If you have any memorandum or written entry from which you testify, annex copies thereof.

II. Are you the agent of the Amoskeag Manufacturing Company? What is the nature of the arrangement for selling their goods or otherwise? Is not all the information which you possess in reference to the subject-matter of the interrogatories addressed to you derived from your having been engaged as agent or otherwise in the sale of their tickets? If so, state what amount of business you have done for them.

III. In testifying as to what consumers or purchasers would "intend" and "understand" by particular labels or tickets, have you not been answering as to what you yourself would intend or understand if ordering tickings?

IV. If in answer to the twenty-second interrogatory you should state that the public and purchasers of tickings might confound the words "Amoskeag Manufacturing Company" with "Omego Ring Twist," please state in what locality you think such a mistake would be likely to occur, and among persons of what education, and whether, in point of fact, you have ever known such a mistake to have been committed; and if so, by whom?

V. Do you know of anything to the advantage of the defendant in this case not mentioned in your replies to the above cross-interrogatories and interrogatories on the part of the plaintiff, or anything to the disadvantage of the plaintiff? If so, please set forth the same fully and at length, as if specially interrogated herein.

S. DICKSON,
Pro Defendant.

30 And afterwards, to wit, on the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and seventy-four, the complainant, by its solicitor, George M. Dallas, esquire, comes into court here and presents interrogatories sur commission to Manchester, New Hampshire, which interrogatories being read and filed, are in the words and of the tenor following, to wit:

United States circuit court.

THE AMOSKEAG MANUFACTURING COMPANY
v.
DAVID TRAINER ET AL.

Interrogatories in chief sur plaintiffs' rule for a commission to Manchester, New Hampshire.

1. What is your name, and where do you reside, and what is your business? By whom are you employed, and how long have you been engaged in your present business or employment?

2. Is or is not the Amoskeag Manufacturing Company a corporation duly incorporated by the State of New Hampshire?

3. Please state the extent of your knowledge as to whether or not the Amoskeag Manufacturing Company are, and have been for many years, and how long engaged, and whether extensively or otherwise, in the manufacture of cotton fabrics. If you have a price-list or circular such as is issued to the trade and the public by or on behalf of the Amoskeag Manufacturing Company, please annex a copy to your answer hereto.

4. Is or is not the said Amoskeag Manufacturing Company
31 now, and has it or has it not, for any and how long a time past, been engaged in manufacture of ticking, and especially of that known as A C A ticking? If aye, has it been so engaged extensively or otherwise? Please answer fully. At how many general agencies acting for or on behalf of said Amoskeag Manufacturing Company, and at what places located, are the goods manufactured by them, including A C A ticking, sold, and how long have those agencies been established?

5. When and where did the Amoskeag Manufacturing Company commence the manufacture of ticking? If you cannot state the precise year, then say whether or not it was prior to the year 1834. Did the Amoskeag Manufacturing Company at any time, and when, introduce any special and what improvement into the manufacture of ticking? Please describe the improvement in manufacture, to which you may refer fully and particularly. When was this improvement introduced? State the year as nearly as you can. If you say that it was in the year 1834, then state in what portion of that year, if you can remember it.

6. If you answer that the Amoskeag Manufacturing Company has been in the manufacture of ticking, then please state how the ticking manufactured by them and not marked with the letters A C A, has been marked, and annex to your answers hereto specimens of the ticking (other than that marked with the letters A C A) manufactured by them, with a label upon each such specimen, being in each instance the label which they place upon the same kind of ticking when they offer it for sale.

7. If you have answered that the Amoskeag Manufacturing Company introduced an improvement into the manufacture of ticking, through which they introduced a new and improved article of ticking, then state

fully and in detail how they now mark or label the said improved article of ticking, and annex a specimen of said ticking with the label now used thereon by the Amoskeag Manufacturing Company when they offer the same ticking for sale. If there has ever been any change or changes made by the Amoskeag Manufacturing Company in the label or mark originally used by them on the said last mentioned article of ticking, then (beginning at the first label or mark used), state each and every change which has been made therein, and the time or times, as nearly as you can, of making the same. Annex to your answer a specimen of each of the labels successively used upon said last mentioned ticking, and mark upon each label so annexed the period during which it was so used.

8. Please state fully and minutely for what purpose and with what intention the letters A C A were originally placed upon and now continue to be used on said last mentioned article of ticking. Were or were not those letters, in the order in which they occur on said label, originally adopted and used by the said Amoskeag Manufacturing Company, or were they copied or borrowed from some other and what source? Were or were they not adopted, and are or are they not still used to designate to the trade and to the public that the goods upon which they appear, or which may be described as A C A tickings, are of the manufacture of the Amoskeag Manufacturing Company, or were and are they adopted and used merely to designate quality, and without regard to the person or persons, corporation or corporations manufacturing them?

32 9. Do or do you not know, and have or have you not, and for how long, known A C A ticking as the distinguishing designation of a certain article of ticking in the market? If so, state, to the extent of your knowledge, what ticking has been and is so designated, and by whom manufactured.

10. Have you seen any of the ticking marked Omega Ring Twist in connection with the letters A C A? Have you examined the same and compared it in quality with that of the Amoskeag Manufacturing Company's A C A ticking? If aye, then state which, if either, is superior to the other, and in what, if in anything, such superiority consists; state the same fully, precisely and in detail. Please state whether you believe yourself competent (and, if so, upon what you base that belief) to compare the said two articles of ticking and arrive at a correct result as to their relative excellence and quality.

11. Do you know or can you set forth any other matter or thing, which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Plaintiffs nominate as commissioner Charles H. Bartlett.

GEO. M. DALLAS,
Per D. S.,
For Plaintiff.

33 And afterwards, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and seventy-four, the defendants by their solicitor, Samuel Dickson, esquire, comes into court here and presents cross-interrogatoris sur commission to Manchester, New Hampshire, which cross-interrogatories being read and filed, are in the words and of the tenor following, to wit:

In the circuit court of the United States for the third circuit. April sessions, 1872.

AMOSKEAG CO. *vs.* TRAINER. } No. 32.

Cross-interrogatories on the part of the defendant to be propounded to witnesses to be examined on the part of the plaintiffs.

1. Upon what do you base you' statement as to the order in which you became acquainted with the different tickets, or the date at which such acquaintance began? If you have any memorandum or written entry from which you testify, annex copies thereof.

2. Are you the agent of the Amoskeag Manufacturing Company? What is the nature of the arrangement for selling their goods or otherwise? Is not all the information which you possess in reference to the subject-matter of the interrogatories addressed to you derived from your having been engaged as agent, or otherwise, in the sale of their tickets? If so, state what amount of business you have done for them.

3. State what portion of your knowledge, if any, as to the busi-
34 ness or tickings of the Amoskeag Company is based upon information of others, and what has come within your own immediate cognizance. State whether you have been getting information as to these matters recently with a view to any examination.

4. State whether you have any actual knowledge as to the time the Amoskeag Company commenced business, or whether it is only what you have heard. In your examination particularize what you know of your own knowledge to be facts and what is derived from others.

5. Have you not been aware that the Amoskeag Company had attempted to interfere with the use of the letters A C A years ago, and that the case was decided against them by the courts, and that this is another attempt to get a decision in their favor? Do you know anything, or have you heard of other parties besides the Amoskeag Company using the letters A C A? State who they are and were.

6. Do you know or can you state any matter or thing to the advantage of the defendants in this case? If so, please set forth the same fully and at large in your answer.

S. DICKSON,
For Defendant.

And afterwards, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-five, the complainant by its solicitor, George M. Dallas, esquire, comes into court here and moves for the appointment of an examiner, whereupon the court appoints Edward F. Pugh, esquire, examiner, to take the testimony and report the same into court.

35 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit. Of April session, 1872.

THE AMOSKEAG MANUFACTURING COMPANY *vs.* DAVID TRAINER, J. NEWLIN TRAINER, William Trainer, and Edward Trainer, trading as D. Trainer & Sons. } In equity. No. 32.

The President of the United States to Clement Bates, esq., Cincinnati, Ohio:

Know ye, that in confidence of your prudence and integrity we have

given unto you, and by these presents do give unto you, Clement Bates, full power and authority, in pursuance of a rule lately made in the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said The Amoskeag Manufacturing Company is complainant and David Trainer et al. are respondents, to call before you at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you by the said complainants as witnesses in the said action, and then and there to examine them on their respective oath or affirmation on certain interrogatories, hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court, closed up and under your seals plainly and distinctly set, together with this writ.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States, at Philadelphia, this fifteenth day of November, A. D. 1873, and in the ninety-eighth year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court.

Fees of commissioner, $25.00.

The execution of this commission appears in certain schedules hereunto annexed.

CLEMENT BATES,
Commissioner.

36 In the circuit court of the United States, for the third circuit.
April sessions, 1872.

THE AMOSKEAG MANUFACTURING COMPANY
against
DAVID TRAINER, J. NEWLIN TRAINER, William Trainer and Edward Trainer, co-partners, trading as D. Trainer & Sons. } In equity. Number 32.

Interrogatories in chief sur plaintiff's rule for a commission to Cincinnati, Ohio.

1. What is your name?
2. Where do you reside?
3. How long have you lived there?
4. What is your business?
5. How long have you been in such business, and who are your partners in it, if any; or by what person, firm, or corporation are you employed, and in what capacity?
6. Do you or your firm, or your employer or employers, purchase and sell tickings in the course of your or his or their business?
7. Have you, in the course of your business, or of that of your employer or employers, become acquainted with any ticking labelled or lettered with a label, ticket, or card, having upon it alone, or in connection with any other, and what device, words, letters, or figures, the letters, A C A? Please annex to your answer a specimen of any such card, ticket, or label, together with a specimen of the ticking from which you may take such specimen label.
8. Have you, in the course of your business, or of that of your employer or employers, met or become acquainted with more than one, and

how many, labels, tickets, or cards, used upon ticking, and having thereon, either alone, or in connection with any other, and what device, words, letters, or figures, the letters, A C A? If you answer that you have met or become acquainted with more than one such label or ticket, please annex a specimen of each thereof, together with a specimen of the ticking upon which said label or ticket had been pasted or attached to your answers hereto.

9. Please state as far as you can from your own knowledge, by what person, firm, or corporation, each of the tickings of which you may annex specimens as requested in the two preceding interrogatories, was manufactured and originally sold, and from whom you, or your firm, or your employer or employers, purchased the same. Was each of said tickings, if not all, but some of them, then which of them, purchased by you, or your employers, in the course of your or their business, as merchants, or otherwise, and how?

10. Please state your belief as to the person or persons, or corporation or corporations, by which each and all of the tickings marked with the letters A C A, have been, and are manufactured.

11. Please mention the order in which you became acquainted with the different tickings, if more than one, marked with the letters
37 A C A, and state, as nearly as you can, the date at which you first met or became acquainted with each of said tickings respectively.

12. Please state the reputation amongst those who deal in tickings, and with the public and purchasers thereof, of tickings having upon them the letters A C A. Have the several tickings, if more than one, which are marked A C A separate and distinct reputations as to quality with those persons who deal in them in your locality? If so, please state the reputation of each, identifying them respectively by reference to the specimens which you may annex to your answers hereto. Have the tickings so marked separate reputations as to quality with the public and amongst purchasers thereof? If so, please state such reputation of each respectively, identifying each ticking as referred to in the manner just indicated.

13. Please state which of said tickings is of the best quality and in what its superiority consists.

14. Do or do not purchasers who desire to buy tickings marked with the letters A C A ask for or describe them as of any particular manufacture, or grade, or quality of goods, or as A C A tickings simply?

15. How do those persons who deal in tickings describe or designate the article which they desire when they intend to purchase tickings marked with the letters A C A? How do they designate or describe the article (if differently) when intending to purchase ticking marked with each of the labels or tickets of which you may annex specimens to your answers? Please answer separately as to the several tickings marked with each of said labels or tickets respectively.

16. How do consumers who purchase tickings, describe or designate the article which they desire when they intend to purchase tickings marked with the letters A C A? How do they designate or describe the article (if differently) when intending to purchase ticking marked with each of the labels or tickets of which you may annex specimens to your answers? Please answer separately as to the several tickings marked with each of said labels or tickets respectively.

17. If you, or merchants in your locality, should, in ordering tickings from a jobber or wholesale dealer therein, describe the tickings you or they wished to purchase as "A C A ticking" merely, what manufact-

ure of ticking would be intended and understood, and what would be the full label which you would expect to find upon such ticking?

18. If a consumer, who desired to purchase from you or from any merchant or dealer in your locality, should ask for "A C A ticking" merely, what manufacture of ticking would you understand him to mean, and what would be the full label or ticket upon such ticking?

19. Do or do you not know, and have or have you not, and for how long, known A C A ticking as the distinguishing designation of a certain article of ticking in the market? If so, state to the extent of your knowledge what ticking has been and is so designated, and by whom manufactured?

20. Do or do not merchants and dealers in ticking, and purchasers and consumers thereof in your locality designate, and have or have they not, and for how long, been accustomed to designate a particular and what ticking, and (if you know) of whose manufacture, as "A C A ticking"?

21. Please state the extent of your experience, if any, in selling tickings marked with the letters A C A. If you have had such experience, then state whether, in your opinion, the public and purchasers of ticking desiring to purchase tickings of the kind having any one of the labels annexed to your answers thereon, might readily be led to believe that the label upon any other of the tickings was the same as that used upon the particular ticking which he or she might
38 desire to buy? Please answer this interrogatory in detail, and with careful and minute reference to each and every label or ticket used upon tickings, and having the letters A C A thereon.

22. If you have answered that you have had experience in the sale of tickings marked with the letters A C A, then state (if you have not already done so) whether you have seen ticking marked with the label of the complainants in this case, containing, amongst other things, the words Amoskeag Manufacturing Company, and the letters A C A, and also, whether or not you have seen a ticket or label upon ticking containing the words and letters Omega A C A Ring Twist. If so, state whether in your opinion the public and purchasers of tickings desiring to purchase ticking of the manufacture of the complainants in this suit, as marked with the label first mentioned in this interrogatory, might or might not be readily led to believe that the ticking marked as last described in this interrogatory, was that manufactured by the complainants, and marked as first mentioned in this interrogatory.

23. Please state fully, minutely, and at large, every other matter, fact, and circumstance within your knowledge relevant and pertinent to this case.

GEO. M. DALLAS.
JAMES E. GOWEN,
For Plaintiffs.

Plaintiffs nominate as commissioner, Clement Bates, esq., of Cincinnati, Ohio.

GEO. M. DALLAS.

The 23d interrogatory in all the other commissions is as follows:

Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

39 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, April session, 1872.

AMOSKEAG MANUFACTURING CO.
vs.
TRAINER ET AL.
} No. 32.

Cross-interrogatories on the part of the defendants to be propounded to witnesses to be examined on the part of the plaintiffs.

1. Upon what do you base your statement as to the order in which you became acquainted with the different tickets, or the date at which such acquaintance began? If you have any memorandum or written entry from which you testify, annex copies thereof.

2. Are you the agent of the Amoskeag Manufacturing Company? What is the nature of the arrangement for selling their goods, or otherwise? Is not all the information which you possess, in reference to the subject-matter of the interrogatories addressed to you, derived from your having been engaged as agent, or otherwise, in the sale of their tickets? If so, state what amount of business you have done for them.

3. In testifying as to what "consumers or purchasers would intend" and "understand" by particular labels, or tickets, have you not been answering as to what you yourself would intend or understand in ordering ticketings?

4. If in answer to the 22d interrogatory you should state that the public and purchasers of tickings might confound the words "Amoskeag Manufacturing Company" with "Omega Ring Twist," please state in what locality you think such a mistake could be likely to occur, and among persons of what education, and whether in point of fact you have ever known such a mistake to have been committed, and, if so, by whom?

5. Do you know of anything to the advantage of the defendant in this case not mentioned in your replies to the above cross-interrogatories and the interrogatories on the part of the plaintiff, or anything to the disadvantage of the plaintiff? If so, please set forth the same fully and at length, as if specially interrogated herein.

S. DICKSON,
For Defendant.

A true copy from the record.

W. GRIER HIBLER,
Pro Clerk.

Fees of Clement Bates, commissioner, $25.00.

Depositions of witnesses produced, sworn, and examined on the 28th day of November, in the year of our Lord one thousand eight hundred and seventy-three, and continued from day to day, at the office of Clement Bates, No. 27½ West Third street, in the city of Cincinnati, Hamilton County, Ohio, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to me, Clement Bates, directed, for the examination of witnesses in a certain cause
40 depending in said court, wherein The Amoskeag Manufacturing Company are plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

WILLIAM F. WEHRMANN, of Cincinnati, Ohio, manufacturer of bedding, aged twenty-six years, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: William F. Wehrmann.

2. To the second interrogatory he saith: In this city, the city of Cincinnati, Ohio.

3. To the third interrogatory he saith: All my life, i. e., twenty-six years and a little more.

4. To the fourth interrogatory he saith: Mattress and bedding manufacturer.

5. To the fifth interrogatory he saith: I have been in this business since June, 1867, about six and a half years; I have no partners; I am not employed by any one; am by myself.

6. To the sixth interrogatory he saith: We purchase them, but only sell them when made up into bedding; very rarely sell them otherwise.

7. To the seventh interrogatory he saith: I have; I really could not tell whether any other words or devices are in connection with the letters A C A; these letters are understood by the trade to be the Amoskeag Company's make; I think the letters A C A may have the name Amoskeag added; I do not use any other ticking than the Amoskeag, and have no other specimen of a card, ticket, or label except theirs; I will cut off and attach a specimen. The specimen marked Exhibit A I give as part of my testimony.

8. To the eighth interrogatory he saith: I have never used any other than the Amoskeag ticking; I may have met with other, but, to tell the truth, I do not remember anything about them.

9. To the ninth interrogatory he saith: I do not know of my own knowledge by whom the A C A ticking, of which I annex a specimen, was originally made or sold; I purchase them from wholesale dealers in this city; Louis Stix & Co., Chambers, Stevens & Co., J. & J. Slevin & Co., and others; I bought them as a merchant, for my own business.

10. To the tenth interrogatory he saith: By the Amoskeag Manufacturing Company; I think that is what the name is.

11. To the eleventh interrogatory he saith: I became acquainted with Amoskeag A C A; that was in 1867, as near as I can get at it; I became acquainted with none others; none so as to say anything about or know anything about.

12. To the twelfth interrogatory he saith: The reputation of A C A tickings are supposed to be the best; as to the rest of the question, I do not know.

13. To the thirteenth interrogatory he saith: I could not say, not being acquainted with other or others by that name.

14. To the fourteenth interrogatory he saith: In the majority of cases simply as A C A; when I sell no questions are asked me about them; when I buy I simply ask for A C A ticking, and expect Amoskeag for them; and they always give me the Amoskeag ticking without asking further questions; they always have so far.

15. To the fifteenth interrogatory he saith: I do not know; I
41 only know about my purchase for my own use, as I said before.

16. To the sixteenth interrogatory he saith: I only describe it as A C A; I do not know how retail or any other consumers describe it.

17. To the seventeenth interrogatory he saith: I would understand it to be Amoskeag—I do not know about others; the full label I would expect would be such as I have annexed a specimen of hereto.

18. To the eighteenth interrogatory he saith: I would understand

Amoskeag make of ticking; the full label is the same as I have annexed.

19. To the nineteenth interrogatory he saith: I understand A C A ticking to be the Amoskeag article. I am not positive that there are other A C A's; I may have seen others, but paid no attention to them or used them.

20. To the twentieth interrogatory he saith: I do not know anything but what we went through before in the other questions.

21. To the twenty-first interrogatory he saith: I nothing about that at all; when I sell they are already made up into bedding.

22. To the twenty-second interrogatory he saith: I know nothing of the other ticking mentioned in the question, that is the Omega A C A Ring Twist.

23. To the twenty-third interrogatory he saith: I know nothing that I can add.

X 1. To the first cross interrogatory he saith: I am not acquainted with any other than the A C A of the Amoskeag make.

X 2. To the second cross-interrogatory he saith: I have never had any dealings with the Amoskeag Manufacturing Company.

X 3. To the third cross-interrogatory he saith: I have.

X 4. To the fourth cross-interrogatory he saith: I know nothing about that.

X 5. To the fifth cross-interrogatory he saith: I do not.

WM. F. WEHRMANN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 28th day of November, 1873, before

CLEMENT BATES,
Commissioner.

ALEXANDER BUCHMAN, of Cincinnati, Ohio, wholesale dry goods dealer, aged forty years and upwards, being duly sworn, and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: Alexander Buchman.

2. To the second interrogatory he saith: In Cincinnati, Ohio.

3. To the third interrogatory he saith: Twelve years.

4. To the fourth interrogatory he saith: Wholesale dry goods.

5. To the fifth interrogatory he saith: I have been in business in my present firm five years. I was in the same business for the five
42 years previous to that; my only partner is Mr. Joseph Buchman. I am the junior partner, at the same time am the buyer and manager of the firm.

7. To the seventh interrogatory he saith (No. 6, omitted by mistake, is after No. 7.—Clement Bates, commisisoner): I have become acquainted with the A C A Amoskeag as well as the A C A Omega; the Amoskeag A C A label is the same as the one marked Exhibit A, now shown me by the commissioner; the Omega A C A I cannot attach, not dealing in the article for three or four years, but to the best of my recollection it has one ticket on top with the words Omega Ring Twist, and one on the bottom with the letters A C A.

6. To the sixth interrogatory he saith (omitted by mistake): We do.

8. To the eighth interrogatory he saith: I refer to above answer to interrogatory seventh for the answer to this question.

9. To the ninth interrogatory he saith: The Amoskeag A C A ticking is manufactured by the Amoskeag Manufacturing Company, and sold by their agents, G. Brewer & Co., of New York; we purchase them from

G. Brewer & Co. I am not aware of who manufactures or who sells the Omega A C A, but have bought them several years ago of Reakirt, Johnson & Gere, commission merchants, of Cincinnati; we have bought the above tickings exclusively for our business to sell again.

10. To the tenth interrogatory he saith: I have already stated the answer to this.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A first, some twelve years ago; have bought and sold them ever since; while the Omega A C A I have become acquainted with some four years ago; bought them at that time and not since.

12. To the twelfth interrogatory he saith: The Amoskeag A C A has by far a greater reputation than any other marked A C A; to the best of my knowledge and belief all persons who deal in both, would willingly give a higher price for the Amoskeag A C A.

13. To the thirteenth interrogatory he saith: The Amoskeag is the best quality. I cannot say exactly in what its superiority consists, except durability and strength.

14. To the fourteenth interrogatory he saith: They all ask for A C A only: it is, however, taken for granted that the Amoskeag is in all cases meant; if they wanted the Omega, they would ask for Omega A C A; even dealers or merchants, who are posted in the articles, wanting Amoskeag, would simply ask for A C A.

15. To the fifteenth interrogatory he saith: If the Amoskeag is wanted, the purchaser will simply state A C A; while if the Omegas are wanted, they will ask for Omega A C A.

16. To the sixteenth interrogatory he saith: We do not deal with consumers, consequently I am unable to state whether they know the difference or not; we only sell to the trade.

17. To the seventeenth interrogatory he saith: In ordering simply A. C A ticking, I would expect to find that made by the Amoskeag Company; the full label is that shown me, marked Exhibit A.

18. To the eighteenth interrogatory he saith: I would understand him to mean the Amoskeag ticking, the same as above stated, if I, myself, were buying of a jobber or commission merchant.

19. To the nineteenth interrogatory he saith: I do know that the A C A ticking manufactured by the Amoskeag Manufacturing Co. is
43 the only ticking designated by the letters A C A alone. I have so known from about ten to twelve years, maybe longer. I do not remember exactly.

20. To the twentieth interrogatory he saith: The answer to this is expressed in the above; as other merchants, purchasers and consumers have, to the best of my knowledge, the same view of this matter as I have.

21. To the twenty-first interrogatory he saith: The extent of my experience is this, that during the busy spring and fall season we sell at least a bale of Amoskeag A C A ticking every two weeks; we could sell more, but that they are so well and popularly known that the profits are very small, and consequently we push other tickings that pay a better profit in preference; my opinion is that the merchants and dealers in ticking, who know the different qualities, cannot be deceived, even should the label be placed upon any other maker's ticking.

22. To the twenty-second interrogatory he saith: I have seen both, but to the best of my recollection I think the Omega has two tickets, one of them "Omega Ring Twist," and the other simply A C A, one above the other; I think merchants and dealers cannot be deceived, but the consumers might be.

23. To the twenty-third interrogatory he saith: I have stated everything that I know in reference to this matter.

X 1. To the first cross-interrogatory the witness saith: I base it on my memory; I have no entries.

X 2. To the second cross-interrogatory he saith: I am no agent; I am simply a dealer in the article, and have no arrangement with them whatever.

X 3. To the third cross-interrogatory he saith: My testimony is derived from my experience as a merchant in buying and selling.

X 4. To the fourth cross-interrogatory he saith: It might occur anywhere where the people have no knowledge of goods; I have no recollection myself as to anybody's making a mistake.

X 5. To the fifth cross-interrogatory he saith: I do not.

ALEX. BUCHMAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of November, 1873, before me.

CLEMENT BATES,
Commissioner.

THEODORE KRUMBERG, of Cincinnati, Ohio, wholesale and retail dry goods dealer, aged sixty-two years and upwards, being duly sworn, and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: Theodore Krumberg.

2. To the second interrogatory he saith: On Walnut Hills, Cincinnati, Ohio.

3. To the third interrogatory he saith: Five and a half years; have lived in this city for thirty-three or four years.

4. To the fourth interrogatory he saith: Retail and wholesale dry goods.

5. To the fifth interrogatory he saith: About twenty-five years or longer, not less; I am in business alone.

6. To the sixth interrogatory he saith: I do.

44 7. To the seventh interrogatory he saith: I have; I have no other specimens of this letter A C A except the Amoskeag now shown me and marked Exhibit A; I have the Amoskeag A C A.

8. To the eighth interrogatory he saith: I had no confidence in any other except the Amoskeag, and never bought any other; i. e., I have perhaps had others, but I have never for ten or fifteen years had any other A C A tick, not being willing to tell my customers that it was first quality; I now have other ticks, but no other A C A ticks.

9. To the ninth interrogatory he saith: I have bought the Amoskeag A C A wherever I could find them cheapest; I have bought them of Claflin, or of Bliss, or of G. Brewer & Co., in New York, or of the branch agency in Philadelphia, of the Amoskeag Company; we expect to get them as cheap of the agency as of the company itself, and have not, therefore, bought direct of the Amoskeag Company.

10. To the tenth interrogatory he saith: The Amoskeag A C A I believe to have been made by the Amoskeag Company, as is shown in my last answer.

11. To the eleventh interrogatory he saith: I got acquainted with the Amoskeag A C A first; that might be twenty-five years ago, when I first bought of Brewer these A C A; since then I became acquainted with the Omega tick; I do not remember when; I do not remember

certainly if it was the A C A of the Omega Company I had, or other letters.

12. To the twelfth interrogatory he saith: Most all customers know the letters A C A, even though they do not know whose A C A the tick is, and the A C A tick has a good reputation; there are tickings with other letters which are finer and cost more, or better bleached, but still they do not hold their feathers any better than the A C A; the Amoskeag tickings marked A C A have the best reputation among A C A tickings.

13. To the thirteenth interrogatory he saith: We think the Amoskeag A C A the best for the price, both on account of the quality and because it always gives satisfaction; there was a time during the war when we could not get them, and had to get outside tickings—outside of the Amoskeags, but there were always complaints about these last.

14. To the fourteenth interrogatory he saith: A great many customers only ask for the best tick, relying on the merchant to give him the best; then we think we have the full right to tell them the Amoskeag A C A is the best; many customers ask for A C A tick; I do not know whether these know the difference between Amoskeag and Omega, or other A C A; they only ask for A C A, and we always give them the Amoskeag; only a few, now and then a merchant who is acquainted with the Amoskeags, will ask for Amoskeag A C A; generally they only ask for A C A alone.

15. To the fifteenth interrogatory he saith: They generally ask for A C A alone; even in writing letters ordering them they write asking for A C A, without further description.

16. To the sixteenth interrogatory he saith: Consumers generally ask for the best, without using any letters or names, unless they have been from one store to another and learned the letters A C A, and come in and ask for A C A ticking, or say they can get it so much cheaper somewhere else, not knowing there are different A C A's.

17. To the seventeenth interrogatory he saith: I buy sometimes of jobbers and commission merchants; I could not say positively whether I describe whose A C A's I want, because I generally buy of the agents of the Amoskeag Company; but I would always expect the Amoskeag when I asked for A C A, and if any other were sent I would write back that it was not what I intended, and would send it back.

18. To the eighteenth interrogatory he saith: I answered before that I understand the Amoskeag.

19. To the nineteenth interrogatory he saith: I would always expect Amoskeag when I ask for A C A; but I have no doubt it would be safer to ask for Amoskeag A C A when buying of some house who did not know me, or know that I would not take any other, and that I knew which was which.

20. To the twentieth interrogatory he saith: Such is the custom; I am certain of it among the German population, and this has been as long as I can remember.

21. To the twenty-first interrogatory he saith: I keep them always on hand, and probably sell some every day; I do not know what amount I sell each day; a country dealer or cross-road merchant might buy A C A tick marked Omega, and think it was the same he had before, when he had Amoskeag A C A before; and consumers in the city or towns might be similarly deceived; the cross-road merchant is generally innocent about the kinds, and consumers usually do not even know the letters A C A; but if they did know them, as many of them do, they would

be satisfied, in my opinion, with the letters A C A without reading or knowing the rest of the name.

22. To the twenty-second interrogatory he saith: I have seen the Amoskeag label as described; I have no doubt I have seen the Omega; I have seen other A C A ticks than the Amoskeag, but I cannot describe their labels or that of the Omega, and do not know whether the words Ring Twist is in it; I have already stated that I think they may be deceived.

23. To the twenty third interrogatory he saith: I do not know anything further to say.

X 1. To the first cross-interrogatory he saith: From the order in which I bought them; I do not testify from any entry, but from remembering.

X 2. To the second cross-interrogatory he saith: I never have been their agent, and have no arrangements with them at all; when I buy I pay them, and that is the end of it.

X 3. To the third cross-interrogatory he saith: My answers applied both to myself and to consumers.

X 4. To the fourth cross-interrogatory he saith: Such mistake might occur among country dealers, and among consumers anywhere, whatever their education might be; I do not know of such a mistake having occurred; in buying in New York A C A ticking has been shown me of the wrong manufacture, but being a dealer I could tell at once that it was not what I wanted.

X 5. To the fifth cross-interrogatory he saith: I can state nothing further.

THEO. KRUMBERG.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 1st day of December, 1873, before me.

CLEMENT BATES,
Commissioner

46 ADAM GEIS, of Cincinnati, Ohio, manufacturer of mattresses and bedding, aged forty-five years and upwards, being duly sworn, and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: Adam Geis.

2. To the second interrogatory he saith: In Cincinnati; keep store 67 West Fifth street.

3. To the third interrogatory he saith: Twenty-eight years (28 years).

4. To the fourth interrogatory he saith: Mattress and bedding manufacturer.

5. To the fifth interrogatory he saith: Twenty-eight years; I have no partner; am in business for myself and by myself.

6. To the sixth interrogatory he saith: I do.

7. To the seventh interrogatory he saith: I have, a great deal of it; I never use any other A C A than the Amoskeag, a specimen of which is this with the mark Exhibit A upon it now shown me, and to which I refer as part of my answer, and attach same; I cannot give any specimen of any other A C A ticks, not using any other.

8. To the eighth interrogatory he saith: I have never tried in my business any other than the Amoskeag A C A.

9. To the ninth interrogatory he saith: I do not know by whom it was made and originally sold; I buy of jobbers altogether, in this city, and in New York, and in Boston, but mostly in this city; I bought them for manufacturing purposes in my business.

10. To the tenth interrogatory he saith: By the Amoskeag Manufacturing Co.

11. To the eleventh interrogatory he saith: The first I became acquainted with was the Amoskeag A C A, about fifteen years ago; I have used the Omegas about ten or twelve years, but none marked A C A of the Omegas.

12. To the twelfth interrogatory he saith: They are considered the best we can use; the best there is for work in feathers and hair; I cannot answer the rest of the question, not knowing anything about it.

13. To the thirteenth interrogatory he saith: The A C A is the best and closest woven, and finest and heaviest that is made, and made of the best material.

14. To the fourteenth interrogatory he saith: Simply as A C A ticking; A C A ticking is always called for; they never ask for Amoskeag A C A ticking; Amoskeag is expected when A C A is asked for.

15. To the fifteenth interrogatory he saith: Simply A C A ticking, no other words at all; that is the only name it goes for, and is what we always get when we ask for A C A ticking; we always receive the Amoskeag A C A; I cannot answer about Omega, if that is wanted specially; I do not even feel sure that there is any A C A of the Omega manufacture; I do not use any, and do not remember certainly that there are any of those letters.

16. To the sixteenth interrogatory he saith: As for consumers, we do not, as a regular practice, sell ticking not made up, but we do, however, sell some, and we buy for consumption in our business very largely; there is no other designation about it except A C A ticking.

17. To the seventeenth interrogatory he saith: The Amoskeag
47 Manufacturing Company's A C A; the full label would be the same as is on the specimen annexed marked Exhibit A, namely, Amoskeag Manufacturing Company, A D. 1836, Power Loom A C A, Manchester, N. H.

18. To the eighteenth interrogatory he saith: The same as I have down in answer to the last question, namely, the Amoskeag.

19. To the nineteenth interrogatory he saith: A C A is the only designation in common use for this Amoskeag ticking, marked with those letters; I have known of this about fifteen years.

20. To the twentieth interrogatory he saith: They all designate this, the Amoskeag A C A ticking, as A C A ticking; I am satisfied they have been accustomed to designate it so for fifteen years; further than that my knowledge does not go.

21. To the twenty-first interrogatory he saith: My experience is for fifteen years; I buy it all the time, but make no regular practice of selling not made up, though I sell whenever any one asks for it; this is not to a great extent; people who do not handle the ticking all the time and can't tell the quality, would be deceived by another label, and many might be deceived if they found the letters A C A; people do not, except those constantly using it, look farther than the letters, and do not generally know the name beyond those letters; if the quality is such that I would expect, and the price the same as I expect, and I myself saw the letters A C A, I hardly think I would look further on the label to see if the word Amoskeag or another name was on it.

22. To the twenty-second interrogatory he saith: I have seen that of the Amoskeag; I cannot recollect about the other, the Omega A C A Ring Twist; I do not know whether I have seen or used Omegas with that mark; certainly people would and might be deceived, for they

would not be apt to scrutinize the name; they would go by the letters A C A.

23. To the twenty-third interrogatory he saith: I do not think of anything else to say.

X 1. To the first cross-interrogatory he saith: I have no memorandum or entries; I testified only from memory.

X 2. To the second cross-interrogatory he saith: I am no agent for them at all; never had anything to do with them.

X 3. To the third cross-interrogatory he saith: From what myself and also everybody else that is using it understand.

X 4. To the fourth cross-interrogatory he saith: I suppose it could not occur in any regular house dealing in tickings, though it might occur by agents or drummers that sell, and any one not well posted might be deceived; people well educated, not experienced in buying ticking—the best educated man in the world might be deceived; I have not known of such a mistake.

X 5. To the fifth cross-interrogatory he saith: I do not.

ADAM GEIS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 2d day of December, 1873, before me.

CLEMENT BATES,
Commissioner.

48 GEORGE M. JENKINS, of Cincinnati, Ohio, salesman in dry-goods store, aged twenty-one years and upwards, being duly sworn, and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: George M. Jenkins.

2. To the second interrogatory he saith: No. 86 John street, Cincinnati, Ohio.

3. To the third interrogatory he saith: I have lived in Cincinnati about seven months.

4. To the fourth interrogatory he saith: Dry-goods clerk in the wholesale and retail dry-goods stores of John Shillito & Co.

5. To the fifth interrogatory he saith: I have been in the dry-goods business six years and a half, always in the retail trade; I have already answered as to what my position is; prior to the last seven months I was in the house of Field, Leiter & Co., in Chicago.

6. To the sixth interrogatory he saith: We do; I have sold tickings for six years and a half.

7. To the seventh interrogatory he saith: I have become acquainted with such tickings having the letters A C A, not alone, but in connection with other devices and words; I have only become acquainted with the Amoskeag A C A; have never sold the Omega A C A, or any other A C A; the full label of the Amoskeag A C A is Amoskeag Manufacturing Company, A. D. 1836, Power Loom A C A, Manchester, N. H., with also two labels, one is a picture of the mills or works; this has been on only about a year and a half last gone by; I think not before then; the other label is two medals with two faces to each; the specimen now shown me, marked Exhibit A, I refer to as part of my testimony.

8. To the eighth interrogatorry he saith: I am acquainted with the name of more than one, but not with any other goods than the A C A of the Amoskeag; I have been acquainted with others only through price-lists; I only remember one other, this is the Omega, therefore I cannot attach any other specimen than the Amoskeag.

9. To the ninth interrogatory he saith: I do not know of my own knowledge by whom they were made; we have been purchasing of H. B. Claflin & Co.; we keep now in New York three men buying for us; I presume they buy from the manufacturers also; they are bought for sale in our business.

10. To the tenth interrogatory he saith: Amoskeag Manufacturing Company make their A C A, I believe.

11. To the eleventh interrogatory he saith: I became acquainted with the A C A six years and a half ago; that is the Amoskeag make, and the other only lately; I have only noticed it since coming here.

12. To the twelfth interrogatory he saith: The very best goods; I know that other A C A, not Amoskeags, are quoted lower; I cannot answer this question fuller.

13. To the thirteenth interrogatory he saith: Amoskeag A C A is the finest and closest.

14. To the fourteenth interrogatory he saith: A great many of them; the majority of them come in and ask for the A C A simply; and when we say we have them, they order so much to be cut off and sent them.

15. To the fifteenth interrogatory he saith: If this question refers to wholesale dealers and buyers of wholesalers, I cannot answer it, never having been employed in a wholesale house; among merchants they would say Amoskeag A C A if they were writing for them for pre-
49 caution, but in asking for them verbally they only use "A C A" in almost every case; most of them don't inquire whether it is Amoskeag or not, they simply say have you got A C A ticking; that is the way I myself do; it is the way that country merchants do, most of them, especially those coming from Kentucky and Tennessee to buy here; a great many of these merchants come to our house.

16. To the sixteenth interrogatory he saith: The consumers simply say, Have you A C A tickings? Most all of them know the letters A C A, but do not know any further, and would take any ticking which had A C A on it, without looking at the label.

17. To the seventeenth interrogatory he saith: Amoskeag A C A ticking would be understood; I have already given the full label.

18. To the eighteenth interrogatory he saith: I should understand him always to mean Amoskeag A C A ticking; the full label I have already given.

19. To the nineteenth interrogatory he saith: I do know such letters as the distinguishing characteristic of the A C A made by the Amoskeag Company; I have known it so for six years and a half.

20. To the twentieth interrogatory he saith: They designate the best Amoskeag in that way; I cannot say how long.

21. To the twenty-first interrogatory he saith: I have sold them for six years and a half; some days we sell seven and eight bolts or pieces a day in the retail department alone; the public and consumers in the retail trade would in almost every case be deceived if the goods had A C A on them and would not look any further at the label than those letters.

22. To the twenty-second interrogatory he saith: I have seen the Amoskeag A C A; the Onega I have never seen except in trade lists and price lists, but not the goods themselves; I cannot answer without having compared the goods whether the public and purchasers would be deceived.

23. To the twenty-third interrogatory he saith: I believe that is about all I can state.

X 1. To the first cross-interrogatory he saith: I have no memorandum or entry; I testify from personal knowledge in selling.

X 2. To the second cross interrogatory he saith: I have never been an agent for them, and have nothing to do with them at all.

X 3. To the third cross-interrogatory he saith: No, sir; not altogether; I testify as to what customers ask me in selling the goods, not as to what I would do myself.

X 4. To the fourth cross-interrogatory he saith: I would not know, not having compared the two goods together.

X 5. To the fifth cross-interrogatory he saith: I know nothing to the advantage or disadvantage of either party.

GEO. M. JENKINS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 3d day of December, 1873, before me.

CLEMENT BATES,
Commissioner.

50 NATHAN STIX, of Cincinnati, Ohio, wholesale dry goods dealer, aged thirty-eight years and upwards, being duly sworn and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: Nathan Stix.

2. To the second interrogatory he saith: Cincinnati, Ohio.

3. To the third interrogatory he saith: Lived here about thirty years.

4. To the fourth interrogatory he saith: Wholesale dry goods.

5. To the fifth interrogatory he saith: About twenty years; I am junior partner in Louis Stix & Co.; Louis Stix and Mrs. Swarts are my partners.

6. To the sixth interrogatory he saith: Yes.

7. To the seventh interrogatory he saith: I have; I have known both the Amoskeag and Omega, but only deal in the Amoskeag now; the full label is that on the specimen annexed hereto marked Exhibit A, viz, Amoskeag Manufacturing Company, A. D. 1836, Power Loom, A C A, Manchester, N. H.

8. To the eighth interrogatory he saith: I cannot annex a specimen of the Omega A C A, not having any, but I am acquainted with it.

9. To the ninth interrogatory he saith: I do not know by whom they were made or originally sold; we bought of commission house here when we bought the Omega; the Amoskeag we buy of their agents, Gardner, Brewer & Co.; they were all bought for use in our business.

10. To the tenth interrogatory he saith: I believe that the Amoskeag A C A were made by the Amoskeag Manufacturing Co.; I do not know what company makes the Omegas.

11. To the eleventh interrogatory he saith: I first became acquainted with the Amoskeag A C A perhaps five or six years ago, it may have been much longer, but I cannot go back further; the Omegas I became acquainted with about two years ago, when I bought a bale or two of their A C A.

12. To the twelfth interrogatory he saith: The reputation of A C A ticking is good; the Amoskeag has the better reputation, the specimen is annexed, marked Exhibit A; among the dealers they will buy nothing else but Amoskeag A C A; if they ask for A C A I show them nothing else; I am not sure about the public and purchasers.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A is the best because it is most durable, best adapted for mattresses.

14. To the fourteenth interrogatory he saith: About every one out

of two will ask for A C A simply; that is, among dealers, especially city dealers; they inquire for nothing else but A C A simply, and that is all we show them.

15. To the fifteenth interrogatory he saith: They inquire, as I said, for the A C A; sometimes they qualify it by asking for Amoskeag, but this is very seldom; the large country dealers, like the city dealers, ask for A C A simply; the smaller country dealers generally buy a cheaper and lower grade of tick, not asking for A C A at all.

16. To the sixteenth interrogatory he saith: I can't say anything about consumers, except such as buy to manufacture; they ask for A C A alone, and refer to the Amoskeag; retail consumers I know nothing about.

51 17. To the seventeenth interrogatory he saith: I should suppose the Amoskeag, of course; full label is, Amoskeag Manufacturing Co., A. D. 1836, Power Loom A C A, Manchester, N. H.

18. To the eighteenth interrogatory he saith: I can't answer for the retail consumers.

19. To the nineteenth interrogatory he saith: I know the A C A ticking refers to the Amoskeag A C A; I have known five or six years for certain, and perhaps longer; I understand it to be manufactured by the Amoskeag Manufacturing Co.

20. To the twentieth interrogatory he saith: They inquire for the A C A ticking, sometimes they qualify it by giving it the full name.

21. To the twenty-first interrogatory he saith: We sell them every day; good dealers I do not think could be deceived, because the Omega has a very large lettering of A C A, and the Amoskeag has a small lettering A C A, and one who has had the Amoskeag before could not be likely to buy any other as a substitute instead of it; we only deal with customers who are well posted about the different makes.

22. To the twenty-second interrogatory he saith: I have seen both; they might be deceived, but among the trade they would not be deceived.

23. To the twenty-third interrogatory he saith: I do not know anything more about it.

X 1. To the first cross-interrogatory he saith: I only testified from remembering; I have no memorandum or entry from which I testified.

X 2. To the second cross-interrogatory he saith: We have no arrangement with them whatever, and never have been agents of them; we merely buy like any other dealers.

X 3. To the third cross-interrogatory he saith: I testified from what knowledge and experience I had derived in business, and not from personal opinions.

X 4. To the fourth cross-interrogatory he saith: I did not say they might confound the names, I only said they might buy A C A tickings without noticing the names; education has nothing to do with it, neither has the locality; it would occur among dealers who had only a limited trade, or limited knowledge of the trade; I have not known of such a mistake.

X 5. To the fifth cross-interrogatory he saith: I know nothing to the advantage of one or the disadvantage of the other; the Omega tick is a very good quality of tick, that is their A C A.

NATHAN STIX.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 5th day of December, 1873, before me.

CLEMENT BATES,
Commissioner.

SIMON STRAUS, of Cincinnati, Ohio, wholesale and retail dry goods dealer, of lawful age, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: Simon Straus.

52 2. To the second interrogatory he saith: Cincinnati, Ohio.

3. To the third interrogatory he saith: About twenty-four or five years.

4. To the fourth interrogatory he saith: Retail and wholesale dry-goods.

5. To the fifth interrogatory he saith: Nearly twenty years. I am in business by myself.

6. To the sixth interrogatory he saith: Yes.

7. To the seventh interrogatory he saith: Yes; we deal only with the Amoskeag A C A, and therefore cannot any specimen except of the Amoskeag A C A; we deal in other tickings marked with other letters; the specimen marked Exhibit A shown me I hereby refer to.

8. To the eighth interrogatory he saith: I only know of the Amoskeag and the Omega A C A's; I can only annex the Amoskeag A C A, not dealing in the other.

9. To the ninth interrogatory he saith: That I could not tell; we bought the Amoskeag of several firms on East; none here; the last we bought this year was from H. B. Claflin & Co., New York; we bought in the course of our business.

10. To the tenth interrogatory he saith: I think they were manufactured by the Amoskeag Company.

11. To the eleventh interrogatory he saith: I became acquainted first with the A C A of the Amoskeag make perhaps ten years ago; the Omega I heard of perhaps two or three years ago, but never used them.

12. To the twelfth interrogatory he saith: Among dealers the Amoskeag A C A tickings have the best reputation; they give good satisfaction; I do not know about the Omega A C A's reputation. The Amoskeag specimen is marked Exhibit A.

13. To the thirteenth interrogatory he saith: I consider the Amoskeag the best ticking, as I said; it has good quality and good stock.

14. To the fourteenth interrogatory he saith: They do not all ask for the full name; a great many ask for A C A alone.

15. To the fifteenth interrogatory he saith: Dealers wanting Amoskeag A C A tick would ask for A C A simply; I do not know very much about other dealers, but I myself ask for A C A expecting Amoskeag A C A; I never would take anything else.

16. To the sixteenth interrogatory he saith: Consumers in my store are generally acquainted with the different kinds of ticking, but they often ask for A C A alone; I always do myself, but cos*t*umers are about divided as to asking for the letters alone, or for the Amoskeag A C A.

17. To the seventeenth interrogatory he saith: I would expect to find the Amoskeag A C A alone; the full is Amoskeag Manufacturing Company, A. D. 1836, Power Loom A C A, Manchester, N. H., as per the specimen annexed marked Exhibit A; the other two pictures on the specimen we do not count.

18. To the eighteenth interrogatory he saith: He means the Amoskeag ticking, nothing else.

19. To the nineteenth interrogatory he saith: I do know it as the distinguishing designation, and have so known it for about fifteen years; by the Amoskeag Manufacturing Company.

53 20. To the twentieth interrogatory he saith: They have; my

knowledge is for fifteen years that they have done so; I do not know before that.

21. To the twenty-first interrogatory he saith: We sell a very decent amount; some every day.

22. To the twenty-second interrogatory he saith: Very frequently, in this city, the merchants just tear off the word Omega, leaving the letters A C A alone, and give it to customers wanting Amoskeag, who are deceived; many people familiar with the name Amoskeag, don't know there is another A C A, and they rely on the letters A C A.

22. To the twenty-second interrogatory he saith: I have seen both; people who do not understand the trade would be easily deceived.

23. To the twenty-third interrogatory he saith: I do not know of any other fact.

X 1. To the first cross-interrogatory he saith: I only testified from my own knowledge, not from memorandum or entry.

X 2. To the second cross-interrogatory he saith: I am no agent, and never have been.

X 3. To the third cross-interrogatory he saith: I answered for myself and for my trade, that is, my customers, and so far as my trade goes; I cannot answer about other merchants' trade.

X 4. To the fourth cross-interrogatory he saith: People knowing the names would only be deceived when the names were torn off; education and locality do not have anything to do with it; with the full label left on, I never knew of any one being deceived.

X 5. To the fifth cross-interrogatory he saith: I know nothing to the advantage or disadvantage of either party; both are strangers to me.

SIMON STRAUS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 6th day of December, 1873, before me.

CLEMENT BATES,
Commissioner.

H. AUGUST HAARMEYER, of Cincinnati, Ohio, retail dry-goods-dealer, of lawful age, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: H. August Haarmeyer.

2. To the second interrogatory he saith: Cincinnati, Ohio.

3. To the third interrogatory he saith: Since 1850.

4. To the fourth interrogatory he saith: Retail dry goods.

5. To the fifth interrogatory he saith: Since 1848; I am junior partner of Wubbolding & Haarmeyer.

6. To the sixth interrogatory he saith: Yes.

7. To the seventh interrogatory he saith: Yes; we have the Amoskeag A C A; the specimen now shown me, marked Exhibit A, I
54 make part of my deposition. We keep no other A C A, and, therefore, I cannot annex any other specimen.

8. To the eighth interrogatory he saith: I cannot say; it was my impression until within a fortnight that there was only one A C A in the market of a fair quality; I think I have seen some low-priced goods marked A C A, but do not remember.

9. To the ninth interrogatory he saith: I cannot say by whom made and sold; we bought in this city of Charles H. Wolff & Co.; we buy entirely in this city; we buy them also of Louis Stix & Co., here; we bought them in the course of our business.

10. To the tenth interrogatory he saith: The Amoskeag Company.

11. To the eleventh interrogatory he saith: I have only known the ticking as the A C A, and did not know any but the Amoskeags made them; I have known theirs for years.

12. To the twelfth interrogatory he saith: I do not know.

13. To the thirteenth interrogatory he saith: We consider A C A Amoskeag superior to anything in that class of goods.

14. To the fourteenth interrogatory he saith: If they ask for any particular ticking at all, they ask for A C A simply.

15. To the fifteenth interrogatory he saith: As a general thing they ask for A C A simply.

16. To the sixteenth interrogatory he saith: Consumers generally ask us for a good ticking, without giving any name at all; sometimes consumers know the names of different tickings and they ask for A C A simply, not Amoskeag A C A.

17. To the seventeenth interrogatory he saith: They would expect Amoskeag A C A in all cases.

18. To the eighteenth interrogatory he saith: I should understand he wanted Amoskeag.

19. To the nineteenth interrogatory he saith: I have understood the letters A C A on ticking to be the distinguishing characteristic of the Amoskeag make for fully ten years.

20. To the twentieth interrogatory he saith: They understand the Amoskeag ticking marked A C A; I could not say how long; I could say not less than ten years.

21. To the twenty-first interrogatory he saith: We keep them on hand all the time; I could hardly answer; merchants would not be deceived; any one knowing the size and looks and general appearance of the Amoskeag ticket would not be deceived; customers judge by general looks and by the letters A C A, and not so much by the name; if the general appearance and the letters A C A were counterfeited, or made generally similar, then most of the customers would be led astray by it.

22. To the twenty-second interrogatory he saith: I have seen the Amoskeag; but the Omega A C A Ring Twist I don't remember to have seen; I could not say whether they might be mistaken, never having seen the Omega A C A.

23. To the twenty-third interrogatory he saith: I don't know anything further.

X 1. To the first cross interrogatory he saith: I have no memorandum.

55 X 2. To the second cross-interrogatory he saith: I have not done any business for them. We are not their agents at all, and never have been.

X 3. To the third cross interrogatory he saith: I speak of myself, and also of what other merchants intend.

X 4. To the fourth cross-interrogatory he saith: I did not say that they would be confounded, never having seen the Omega ticking.

X 5. To the fifth cross-interrogatory he saith: I do not.

H. AUG. HAARMEYER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 8th day of December, 1873, before me.

CLEMENT BATES,
Commissioner.

(Endorsed:) Opened in open court and filed December 15, 1873.

56 *Commission to Rock Island, Illinois.*

The execution of this commission appears in certain schedules hereunto annexed.

HENRY C. CONNELLY,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn, and examined on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and seventy-three, and continued by adjournments from day to day, at the office of Henry C. Connelly, in the city of Rock Island, county of Rock Island, in the State of Illinois, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, Henry C. Connelly, directed for the examination of witnesses in a certain cause depending in said court, wherein the Amoskeag Manufacturing Company are plaintiffs and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

LEANDER S. GATES, a resident of the city of Rock Island, county of Rock Island, and State of Illinois, and by occupation a dry-goods merchant, aged twenty-eight years and upwards, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Leander S. Gates.

2. To the second interrogrtory he saith: I reside in the city of Rock Island, Illinois.

3. To the third interrogatory he saith: I have resided here two years and four months.

4. To the fourth interrogatory he saith: My business is that of a dry-goods and carpet merchant.

5. To the fifth interrogatory he saith: I have been in this business about eight years. My partner is my brother Alphonso Gates, our firm name being L. S. Gates & Co.

6. To the sixth interrogatory he saith: Our firm purchases and sells tickings.

7. To the seventh interrogatory he saith: I have in the course of my business became acquainted with a ticking labelled and lettered A C A, a specimen of which I now annex to this my deposition, and ask that it be made a part of the same, having attached my signature to the same, the same being marked Exhibit A, by the commissioner.

8. To the eighth interrogatory he saith: The only one I have ever seen is the one marked Exhibit A, last above mentioned This is the only kind we have ever had on sale.

9. To the ninth interrogatory he saith: I always supposed that the article we have sold was manufactured by the Amoskeag Manufacturing Company of Manchester, N. H. We have bought these goods from Sargent Bros. & Co., Boston, Mass., Butler, Bloom & Clapp, New York, and John B. Farwell & Co., of Chicago. We may have had some from Claflin & Co., New York, but I am not certain. We purchased as merchants to sell again.

57 10. To the tenth interrogatory he saith: I have always believed or supposed they were manufactured by the Amoskeag Man'g Company, because they were so labelled.

11. To the eleventh interrogatory he saith: I became acquainted with only the one already mentioned, and that was about five years ago.

12. To the twelfth interrogatory he saith: It has the reputation of being the best ticking made; we always bought it, thinking it the best. I have never known or sold any except the specimen Exhibit A, and can't compare it with any other.

13. To the thirteenth interrogatory he saith: I have already answered all I know on this subject.

14. To the fourteenth interrogatory he saith: I always call, in purchasing, for the A C A ticking simply. Our customers always, or generally at least, describe them as A C A ticking in calling for them.

15. To the fifteenth interrogatory he saith: I always call for A C A ticking, and our customers generally do the same. I have not known persons acquainted with the brand to describe it differently from the A C A ticking.

16. To the sixteenth interrogatory he saith: Consumers call for A C A ticking generally.

17. To the seventeenth interrogatory he saith: In ordering A C A ticking we would expect to receive the Amoskeag Manufacturing Company's ticking, with a label in all respects similar to the one attached to Exhibit A.

18. To the eighteenth interrogatory he saith: I would understand him to mean the Amoskeag Manufacturing Company's ticking. The full label or ticket would be the same as appears from Exhibit A.

19. To the nineteenth interrogatory he saith: I do know and have known A C A ticking about five years. I have always supposed this ticking was manufactured by the Amoskeag Manufacturing Company of Manchester, N. H.

20. To the twentieth interrogatory he saith: They do and have done so since I have known the ticking as appears in Exhibit A.

21. To the twenty-first interrogatory he saith: I have been selling it for about five years, and during that time I have sold a good deal—more than of any other kind. Never having seen any other brand than the one mentioned, I cannot make further answer to the question.

22. To the twenty-second interrogatory he saith: I have never seen the ticking described in the question as Omega A C A Ring Twist, and can give no opinion on the subject.

23. To the twenty-third interrogatory he saith: I know nothing more.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I have not became acquainted with different tickets. I have not testified from any memorandum or written entry.

58 X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; we buy from jobbers, and sell them as we please; all the information I have with reference to the subject is derived from the sale of the A C A tickings, but not as the agent of the Amoskeag Manufacturing Company.

X 3. To the third cross-interrogatory he saith: I have; from the personal knowledge I have obtained.

X 4. To the fourth cross-interrogatory he saith: I have not made such answer as is mentioned in this question; have never known such mistake to have been committed.

X 5. To the fifth cross-interrogatory he saith: I know nothing more than I have already stated.

LEANDER S. GATES.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of December, A. D. 1873, before

[SEAL.] HENRY C. CONNELLY,
Commissioner.

Witness fees, one and a half dollars—not paid.

WALTER S. PARSONS, a resident of the city of Rock Island, county of Rock Island, and State of Illinois, and by occupation a dry-goods merchant, aged thirty-eight years and upwards, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Walter S. Parsons.
2. To the second interrogatory he saith: Reside in Rock Island, Ill.
3. To the third interrogatory he saith: I have lived here eleven years.
4. To the fourth interrogatory he saith: My business is dry-goods merchant.
5. To the fifth interrogatory he saith: I have been thirteen years in the dry-goods business; my partner is Mrs. Mary H. Wadsworth.
6. To the sixth interrogatory he saith: Our firm sells tickings in the course of our business.
7. To the seventh interrogatory he saith: I have became acquainted with ticking of the Amoskeag Manufacturing Company marked A C A; the ticking which we sell is similar to the piece now shown me marked Exhibit A (here the commissioner hands the same piece of ticking marked and designated as Exhibit A in the deposition of Leander S. Gates, hereto attached); it also has a label similar to the ticking labelled, which we sell; the Exhibit A is a specimen of the ticking we sell, and the label on the ticking is a fac simile of labels on the ticking we sell.

59 8. To the eighth interrogatory he saith: I have never seen any ticking with the A C A on it, except the kind already described, that I know of.

9. To the ninth interrogatory he saith: I don't know from personal knowledge who manufactured the ticking just described; we purchase that which we sell from Field, Leiter, & Co., Chicago, Eldridge, Dunham & Co., New York, and Sargent Bros. & Co., Boston; we buy these goods in the regular course of our business as merchants.
10. To the 10th interrogatory he saith: I know only one ticking marked with the letters A C A, and I have always supposed it was manufactured by the Amoskeag Manufacturing Company, at Manchester, N. H., but I have no personal knowledge on the subject.
11. To the eleventh interrogatory he saith: I know only one ticking marked A C A, and became acquainted with that probably over ten years ago.
12. To the twelfth interrogatory he saith: The A C A ticking, I have already mentioned, is the best, and has that reputation amongst those who deal in it. I know of but one ticking marked with the letters A C A, and cannot say as to its reputation in comparison to other tickings marked A C A.

Monday, December 29th, 1873, five o'clock p. m., adjourned to meet to-morrow morning at ten o'clock a. m.

TUESDAY, *December 30th*, 1873—ten o'clock a. m.

Met pursuant to adjournment.

The witness, on resuming the examination, asks the commissioner to make the following entry for him:

Since our adjournment last evening I have been giving this ticking question much thought, especially as to the A C A ticking; on my return to our storeroom I examined a number of specimens of ticking and found what I believe to be Omega A C A Ring Twist; only a portion of the label was attached to this piece of ticking, which I ask the commissioner to attach to a piece of the A C A Ring Twist ticking, mark it Exhibit B, and make it a part of this my deposition; I suppose, without knowing positively, this has been in the store six or eight months. I wish to modify all my answers previously made so as to include said Exhibit B as an A C A which I have seen and dealt in. I cannot tell from whom we purchased the specimen shown in Exhibit B, neither do I know who manufactured the same. I purchased this Exhibit B in the course of business as a merchant to sell again, and believe the same was manufactured by the Omega Company. Exhibit A and Exhibit B are both good articles; both have good reputations among those who deal in tickings, so far as I know; they have separate and distinct reputations as to stripe and style and quality—Exhibit A being a superior article to Exhibit B—amongst those who deal in them in this locality, so far as I know, as well as with the public and amongst purchasers.

13. To the thirteenth interrogatory he saith: The Amoskeag ticking A C A is superior to the Omega A C A, on the ground of its being a heavier article.

14. To the fourteenth interrogatory he saith: When purchasers ask for A C A ticking they don't ask in the name of the manufacturer, but simply for A C A ticking.

15. To the fifteenth interrogatory he saith: Dealers ask, so far as I know, for the Amoskeag A C As or Omega A C As.

16. To the sixteenth interrogatory he saith: Consumers who know the brands, so far as I know, when they ask for A C As, say Amoskeag A C As or Omega A C As; as a rule, they simply ask for the best ticking who do not know the brands.

17. To the seventh interrogatory he saith: In ordering an A C
60 As ticking merely I would mean and expect to get the Amoskeag Manufacturing Company's A C As, and I would expect to find upon it the same label as Exhibit A.

18. To the eighteenth interrogatory he saith: I would understand the consumer to mean the Amoskeag Man'g Co's A C As, which would have the same label as Exhibit A.

19. To the nineteenth interrogatory he saith: For ten years I have known A C A ticking as a distinguishing designation of a certain article in the market; the ticking of the Amoskeag Manufacturing Company has been so designated.

20. To the twentieth interrogatory he saith: They do, and have been for ten years; the ticking thus designated has been manufactured by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have sold tickings marked with the letters A C A for ten years. I think the public might be deceived by the A C A of another manufacturing company other than the Amoskeag Man'g Co., and buy that for the Amoskeag.

22. To the twenty-second interrogatory he saith: I have seen both the brands described in the question and sold them, and think the public and purchasers of tickings desiring to purchase ticking of the Amoskeag Manu'g Company might be lead to believe that the Omega A C A Ring Twist was that manufactured by the Amoskeag Company and marked A C A.

23. To the twenty-third interrogatory he saith: I know nothing further.

Cross examination:

X 1. To the first cross-interrogatory he saith: I have not stated the order in which I became acquainted with the different tickings mentioned, though I did become acquainted with the Amoskeag A C As over ten years ago and the Omega A C As some years after; I have used no memorandum or written entry in testifying.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; we have no arrangement for selling their goods; all the information which I possess in reference to the subject has been derived from my experience in the dry goods business.

X 3. To the third cross interrogatory he saith: In testifying to what consumers or purchasers would intend and understand by particular labels or tickets, I mean what I understand myself as well as what the purchasers might understand.

X 4. To the fourth cross interrogatory he saith: I have not stated that the public would likely confound the words Amoskeag Man'g Comp'y with Omega Ring Twist, but that persons desiring to purchase the Amoskeag M'n'g Co's A C As might be deceived by the Omega A C As Ring Twist, though persons well acquainted with the two brands and the quality of the goods would not likely be deceived; the deception is as likely to occur in one locality as another. I don't now remember an occurrence of a mistake in the two brands.

X 5. To the fifth cross-interrogatory he saith: I know nothing more.

WALTER S. PARSONS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 30th day of December, A. D. 1873, before

[SEAL.] HENRY C. CONNELLY,
Commissioner.

61 JOSEPH LEVY, a resident of the city of Rock Island, county of Rock Island, and State of Illinois, and by occupation a dry-goods merchant, aged forty-five years and upwards, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Joseph Levy.
2. To the second interrogatory he saith: I live in Rock Island, Ill.
3. To the third interrogatory he saith: I have resided here eighteen years.
4. To the fourth interrogatory he saith: My business is selling dry goods.
5. To the fifth interrogatory he saith: I have been in this business about six years; have no partner.
6. To the sixth interrogatory he saith: I do.
7. To the seventh interrogatory he saith: I have become acquainted with such ticking; the piece of ticking designated Exhibit A, with the label on it, is a specimen of such ticking and of the label usually found upon tickings of this make.
8. To the eighth interrogatory he saith: I have become acquainted with more than one in my business—two, one the Amoskeag Co.'s A C A, and the other Omega A C A. I have no specimen of the Omega myself, but Exhibit B is a specimen of the Omega A C A.
9. To the ninth interrogatory he saith: I don't know who manufac-

tures either brand; I buy the Amoskeag A C As from Stettam Bros., Chicago, also from Richard Shaw & Winslow, Chicago; I have never had but one pieee of the Omega A C A, which I bought from Stettam Bros., Chicago; all my purchases have been as a merchant.

10. To the tenth interrogatory he saith: I believe Exhibit A was manufactured by the Amoskeag Manufacturing Company, and I believe Exhibit B was manufactured by some other company, but don't know what company.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag Man'g Co.'s A C As—this was about six years ago; the Omega A C A I bought about three years ago—that was the first I knew of it.

12. To the twelfth interrogatory he saith: The Amoskeag Man'g Co.'s A C A is the best in reputation—I consider it the best there is; the A C A ticking is known as the best brand; the Omega A C A is a good ticking, but is not equal to the Amoskeag A C A—it is not so heavy; I think this is the reputation it has amongst dealers and those acquainted with it.

13. To the thirteenth interrogatory he saith: The Amoskeag Man'g Co.'s A C As is the best quality; it is heavier and firmer than the Omega A C A.

14. To the fourteenth interrogatory he saith: Purchasers when they mention any particular brand ask for A C A tickings simply.

15. To the fifteenth interrogatory he saith: Dealers generally ask for A C A tickings simply; when they designate or describe the article they ask for Amoskeag. I don't remember of ever having any one ask for the Omega.

16. To the sixteenth interrogatory he saith: Consumers when they intend to purchase, as a rule ask for the Amoskeag A C As; when
62 they call for a particular article they ask for Amoskeag A C A; I don't know consumers ever inquiring for Omega.

17. To the seventeenth interrogatory he saith: I would understand the Amoskeag Man'g Co.'s A C A, and would expect to find a label similar to that on Exhibit A.

18. To the eighteenth interrogatory he saith: I would understand a consumer to mean Amoskeag A C A, and the label would be the same as in Exhibit A.

19. To the nineteenth interrogatory he saith: I do know A C A ticking as a certain article in the market; I have known it about six years; the Amoskeag A C A is so designated, and I suppose it is manufactured by the Amoskeag Manufacturing Company, Manchester, N. H.

20. To the twentieth interrogatory he saith: Merchants, purchasers, and consumers do and have for six years, so far as I know, been accustomed to designate a particular ticking as A C A ticking, and this ticking I suppose to be manufactured by the Amoskeag Manuf'g Company.

21 To the twenty-first interrogatory he saith: I have been selling A C A ticking six years; those that don't understand might buy one brand for the other, but those acquainted with tickings would never buy the Omega A C A's for the Amoskeag A C A's.

22. To the twenty-second interrogatory he saith: I have seen both tickets mentioned in this question; the remainder of the question I have already answered above.

23. To the twenty-third interrogatory he saith: I know nothing more.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I saw the Amoskeag

first about six years ago, and the Omega about three years ago, in the course of my business. I have not testified from a memorandum or written entry.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; I only buy them as I buy other goods; I have received no knowledge as such agent.

X 3. To the third cross-interrogatory he saith: I have been answering as to what I would understand, as well as others, in ordering tickings.

4. To the fourth interrogatory he saith: I don't know of any such mistake being committed, and don't it likely to be committed anywhere by persons acquainted with the two brands.

5. To the fifth interrogatory he saith: I know nothing.

JOSEPH LEVY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 30th day of December, A. D. 1873, before

[SEAL.] HENRY C. CONNELLY,
Commissioner.

(Endorsed:) Opened in open court and filed January 7th, 1874.

63 *Commission to Saint Louis, Missouri.*

The execution of this commission appears in certain schedules hereunto annexed.

JOHN D. GREEN,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

At the execution of a commission for the examination of witnesses between The Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants, this ticking and label hereto attached and marked Exhibit A was produced and shown to Jesse L. Boogher, Joseph Cain, A. Frank, John Vogel, John T. Davis, John Bohn, Henry Miller, D. Crawford, Conrad Ottmer, J. W. Worthington, and Cornelius Voorhis, and by them deposed unto at the time of the examination.

JOHN D. GREEN,
Commissioner.

JESSE L. BOOGHER.
JOSEPH CAIN.
A. FRANK.
JNO. T. DAVIS.
CORNELIUS VOORHIS.
C. OTTMER.
J. W. WORTHINGTON.
D. CRAWFORD.
JOHN BOHAN.
HENRY MILLER.

I hereby certify that John Vogel neglected to sign his name to this paper, for the reason that I neglected to draw his attention to the act of signing it.

JOHN D. GREEN,
Commissioner.

Depositions of witnesses produced, sworn, and examined on the 27th day of December, in the year of our Lord one thousand eight hundred and seventy-three, and continued by adjournment from day to day at the office of John D. Green, in the city of St. Louis, county of St. Louis, in the State of Missouri, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, John D. Green, directed, for the examination of witnesses in a certain cause depending in said court, wherein The Amoskeag Manufacturing Company are plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

JESSE L. BOOGHER, of the city of St. Louis, and State of Missouri, merchant, one of the firm of Henry Bell & Son, aged about forty years and upwards, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Jesse L. Boogher.

2. To the second interrogatory he saith: I reside in St. Louis, Missouri.

3. To the third interrogatory he saith: I have resided in St. Louis about twenty years.

4. To the fourth interrogatory he saith: I am a wholesale dry-goods merchant.

5. To the fifth interrogatory he saith: I have been in the dry-goods business ever since I have been in St. Louis. I am a member of the firm Henry Bell & Son. My partners are Henry Bell, Daniel W. Bell,
64 and John P. Boogher. My especial department is buying and selling goods, but principally buying. I am the principal purchaser of the house.

6. To the sixth interrogatory he saith: My firm sells ticking in the course of our business.

7. To the seventh interrogatory he saith: I have in the course of my business, as a member of the firm of Henry Bell & Son, become acquainted with ticking labelled A C A, in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Manchester, N. H.; this label is the mark by which we distinguish the goods and know them; I herewith file and make part of my deposition a piece of ticking and the label thereon; this label is the trade mark of the Amoskeag Manufacturing Company, and is marked in this deposition as Exhibit A; I have known this brand of ticking and label ever since I have been in the dry goods business; A C A always denoted a certain brand of ticking manufactured by the Amoskeag Company.

8. To the eighth interrogatory he saith: I have understood that there was another ticking marked A C A, and with other words in connection therewith, but I have never met this ticking and cannot say what the devices were; I think I have heard of an Omega tick of that brand; as I have never met this ticking nor sold it, I cannot annex a specimen hereto nor the label thereof.

9. To the ninth interrogatory he saith: I have never bought but one ticking marked A C A, and that we, that is my firm, bought this ticking from Gardnor Brewer & Company; I can't say who made this ticking; all I know about it is the labels or tickets; I have filed only one specimen of ticking herewith, and I speak of that kind of ticking and the label thereto annexed; I never bought any other A C A ticking except the kind of which a sample is made a part of this deposition and

marked Exhibit A; we may have had Omega ticks, but we never had any Omega A C A; we bought of Gardner Brewer & Company in packages; they sold the goods and we bought them; I understood they were the makers of the goods, or the agents of the makers.

10. To the tenth interrogatory he saith: I have no belief in regard to this question; I have always understood that Gardner Brewer & Company manufactured the Amoskeag goods, and the ticking of the grade A C A, of which I have filed herewith a sample and label.

11. To the eleventh interrogatory he saith: I only know one ticking marked A C A; I have known the Amoskeag A C A for twenty years or thereabouts; I heard of the Omega A C A recently for the first time; I can't say the precise date.

12. To the twelfth interrogatory he saith: The Amoskeag A C A ticking is among, if not the most popular, of the better class of goods; is sold by us more largely than any other ticking; I only know the reputation of the Amoskeag A C A; the Amoskeag A C A has the finest of reputations; if any one should write to me for A C A ticking, I would understand that they would want the Amoskeag ticking; the specimen herewith filed is a specimen of the Amoskeag goods known as A C A; I only know the reputation of the Amoskeag goods; I nothing about the reputation of the Omega goods.

13. To the thirteenth interrogatory he saith: I never examined the Omega goods, and cannot speak for them.

14. To the fourteenth interrogatory he saith: They generally say just A C A, or as A C A ticking simply.

15. To the fifteenth interrogatory he saith: When persons wish to buy the Amoskeag A C A ticking they designate it by the letters A C A alone, and rarely use the word Amoskeag therewith; I have only filed one specimen of ticking, and speak of it; I have never heard any one ask for the Omega A C A; when dealers wish to have the Amoskeag
65 A C A ticking, they write for or ask for simply A C A ticking, and rarely mention the word Amoskeag therewith, and we always understand that they wish the Amoskeag A C A ticking; I have never dealt in the Omega tick, and can't say how the people designate it.

16. To the sixteenth interrogatory he saith: I can't say how consumers designate A C A ticking, as we are wholesale merchants and don't sell to consumers; and as to the remainder of this sixteenth interrogatory, I have no knowledge of the matter inquired of.

17. To the seventeenth interrogatory he saith: If I should order ticking designated simply by the letters A C A ticking, or should others order ticking by that designation of me, I should expect to get the Amoskeag A C A ticking of that herewith filed, and with a label precisely like the one of said piece of ticking herewith filed and marked Exhibit A, and should send the same make and quality to those ordering of me.

18. To the eighteenth interrogatory he saith: I have no knowledge of the matter inquired of in this interrogatory, as we are wholesale merchants and do not sell to consumers.

19. To the nineteenth interrogatory he saith: I do know that A C A has designated a certain article of ticking; that is the Amoskeag A C A ticking; I have known this to be the fact for nearly twenty years; it is the Amoskeag Manufacturing Company's A C A ticking; I believe Gardner Brewer & Co. are the persons most interested in the company, but I am not certain on that point.

20. To the twentieth interrogatory he saith: Merchants, dealers, and

purchasers, ever since I have been in business, have been in the habit of designating a certain brand of the Amoskeag Manufacturing Company's ticking as A C A; this ticking I understand is manufactured by the Amoskeag Manufacturing Company; we have been in the habit of buying it of Gardner Brewer & Co.

21. To the twenty-first interrogatory he saith: I have had an experience of twenty years in selling ticking marked A C A, but this ticking is the Amoskeag ticking, and I am unacquainted with any other A C A ticking; and therefore I cannot answer any other portion of interrogatory twenty-one.

22. To the twenty-second interrogatory he saith: I have seen ticking marked Amoskeag Manufacturing Company and the letters A C A, but I have never seen a label containing Omega A C A Ring Twist, and therefore am unable to answer the interrogatory; if I have seen such goods I have no recollection of the goods or label at this date.

23. To the twenty-third interrogatory he saith: I know nothing further that is material to the parties.

Not being able to finish this deposition, owing to the fact that the witness left with my permission and did not return, I hereby adjourn the taking of depositions until Monday morning, the 29th of December, 1873, at eight o'clock a. m. This Saturday, the 27th of December, 1873.

JOHN D. GREEN,
Commissioner.

Cross-examination:

X 1. To the first cross-interrogatory the witness, Jesse L. Boogher, continuing his deposition, saith: I only know one ticket or label and that is the Amoskeag, and I base my statement from actual experience in handling the goods; I know I have been in business, as clerk and partner, for twenty years, and I know I have been handling the goods ever since I have been in business; I have no written memorandum or written entry from which I testify, and therefore I cannot file copies required.

66 X 2. To the second cross-interrogatory he saith: I am not an agent of the Amoskeag Manufacturing Company; we buy the goods and pay for them; that is the only arrangement I or my firm have with Gardner Brewer & Company; I have never done any business for that company; we are not agents for any one; we do business for ourselves to make money; I have never been agent for the Amoskeag Manufacturing Company, and therefore I could not have got my information as their agent; my knowledge is derived from actual business transactions, in buying and selling goods; I have never done any business for them.

X 3. To the third cross-interrogatory he saith: As to consumers I have given no testimony, but in my testimony as to purchasers I spoke of what they would intend when ordering ticking from me, and what I would intend and understand when ordering ticking for my firm, and receiving orders from others for ticking.

X 4. To the fourth cross-interrogatory he saith: I have given no direct information bearing on this question, and of the matter inquired of I have no knowledge; I have not stated that the public and purchasers might confound the two brands of ticking.

X 5. To the fifth cross-interrogatory he saith: I know nothing further that would be of any advantage or disadvantage of either party.

JESSE L. BOOGHER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of December, 1873, before me.

JOHN D. GREEN,
Commissioner.

JOSEPH CAIN, of the city of St. Louis, county of St. Louis, and State of Missouri, merchant, aged thirty-nine years and upwards, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Joseph Cain.

2. To the second interrogatory he saith: I reside in the city of St. Louis, Missouri.

3. To the third interrogatory he saith: I have lived there seventeen years and over.

4. To the fourth interrogatory he saith: I am in the wholesale dry-goods business.

5. To the fifth interrogatory he saith: I have been clerk and partner seventeen years; I am one of the firm of B. and J. F. Slevin & Co.; the firm is composed of the following partners: Bernard Slevin, John F. Slevin and myself; my business is to buy and sell; I buy nearly all the goods.

6. To the sixth interrogatory he saith: My firm buy and sell ticking in the course of our business.

7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with ticking marked and labelled A C A, in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Manchester, N. H.; I recognize the label and brand and ticking marked Exhibit A, and herewith file the same as a part of my deposition; this article is made by the Amoskeag Manufacturing Company.

8. To the eighth interrogatory he saith: We never bought any
67 other ticking marked A C A, but I have seen other ticking marked A C A; the Omega A C A is the only other brand I ever noticed; I forget the other words on the label except the words Omega A C A; we never deal in this Omega brand, and it is not in my power to annex any specimen of the goods or the label.

9. To the ninth interrogatory he saith: We never bought any of the Omega brand, and I do not know who sells it; I have annexed hereto only Amoskeag A C A ticking; we buy the Amoskeag ticking from Gardner Brewer & Company, and we have bought it also of Alexander Murdock & Co., of Baltimore; Gardner Brewer & Company are a Philadelphia firm; we bought the Amoskeag goods in bales; I think there was between six and seven hundred yards in a bale; I know not the precise quantity.

10. To the tenth interrogatory he saith: I don't know who manufactures the Omega goods; the Amoskeag, or genuine A C A, is manufactured by the Amoskeag Manufacturing Company; that is the only make we recognize as the genuine A C A.

11. To the eleventh interrogatory he saith: I can recollect the Amoskeag A C A ever since I have been in business, about seventeen years; I never bought the Omega A C A, but I think I met it three or four years ago, whilst going around buying, but I can't recollect when I first met it; this is to the best of my present recollection; I don't recollect of ever having met any other ticking A C A, except these two.

12. To the twelfth interrogatory he saith: With our trade the Amoskeag A C A ticking is No. 1; we have a large German trade that don't

want any but the Amoskeag A C A ticking; I don't know the reputation of the Omega A C A ticking; we don't keep it; the Amoskeag is the only one which has any reputation; we have had orders for the other, but we never kept it; I don't remember to have heard any one speak of its reputation; I have only annexed the Amoskeag A C A hereto, and can only speak of its reputation; the Amoskeag A C A has the best reputation with our trade as a No. 1 feather tick; I speak of the Amoskeag A C A ticking, as sample and label of which is hereto annexed, and marked Exhibit A.

13. To the thirteenth interrogatory he saith: I can't compare the Omega and Amoskeag together, because I am not sufficiently well acquainted with the Omega; the good quality of the Amoskeag A C A is that the texture is so fine that it does not leak feathers.

14. To the fourteenth interrogatory he saith: The largest portion of our trade order this ticking by the letters A C A ticking simply.

15. To the fifteenth interrogatory he saith: Dealers in ticking designate this A C A ticking by the letters A C A alone, that is A C A ticking, and we understand that they want the Amoskeag Manufacturing Company's A C A tick; we have orders for the Omega A C A ticking, but very few; we do not keep that goods, and I have not annexed hereto any sample or label thereof.

16. To the sixteenth interrogatory he saith: We do not come in contact with consumers, except mattress makers; when they buy Amoskeag A C A from us they usually say simply the A C A tick; some few of them say the Amoskeag tick; in this answer I can't speak of the Omega ticking; I don't think any consumers ever ordered any of the Omega brand of us.

17. To the seventeenth interrogatory he says: If I or merchants in this city should speak of A C A ticking, and wish to purchase A C A ticking, and order it by the simple terms of A C A ticking, we would expect to get the Amoskeag A C A ticking, manufactured by the
68 Amoskeag Manufacturing Company, and we would expect to get ticking like the sample herewith filed, and with a label or mark like the one marked Exhibit A, and filed as part of this deposition.

18. To the eighteenth interrogatory he saith: My answer to this question is, if consumers in my locality should ask for A C A ticking, I would understand they would mean and desire the Amoskeag A C A ticking manufactured by the Amoskeag Manufacturing Company, of like quality and same manufacture, and with a label or mark like the one filed herewith and marked Exhibit A.

19. To the nineteenth interrogatory he saith: I have known for seventeen years that A C A ticking designated a certain ticking in the market of a certain brand and of a certain make; to the extent of my knowledge the A C A ticking manufactured by the Amoskeag Manufacturing Company has always been designated and distinguished by the letters A C A, and I have filed a sample of that goods as part of this deposition.

20. To the twentieth interrogatory he saith: For the last seventeen years I know that purchasers, dealers, and consumers of ticking in this locality have been accustomed to designate a certain grade of ticking, of a certain make, made by a certain company, as A C A, and this ticking is manufactured by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have sold A C A ticking for the last seventeen years; I cannot answer this question fully from the fact we never kept the other brand.

22. To the twenty-second interrogatory he saith: I have seen the

label of the complainant, containing the words Amoskeag Manufacturing Company and the letters A C A; I recollect having seen the Omega brand, marked Omega A C A, but whether the words Ring Twist was also annexed thereto, I don't remember; we never kept the goods, and I have no knowledge that would enable me to answer the rest of the interrogatory.

23. To the twenty-third interrogatory he saith: I think I have answered all I know about this matter, and I don't believe I know anything further material to either party.

Cross examination:

X 1. To the first cross-interrogatory he saith: My earliest recollections of selling dry goods are connected with the A C A ticking, that is the Amoskeag ticking; I know how long I have been in business, and I have been selling that brand ever since I have been in business; I have no memorandum from which to testify.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; we buy their goods like we would from any other person, and sell them; my knowledge has been derived altogether from my dealing in their goods; I consider I know all about their tickings, but I have never been their agent; my knowledge comes from my dealings in their goods; we have never done any business for them; all our transactions were done on our own account.

X 3. To the third cross-interrogatory he saith: I have testified to what I know others to understand.

X 4. To the fourth cross-interrogatory he saith: I have never stated that any one would confound the words Amoskeag Manufacturing Company with Omega Ring Twist, and therefore cannot answer this question; that is, I have no knowledge of the matter inquired of.

X 5. To the fifth cross-interrogatory he saith: I know nothing
69 further that would be to the advantage of the defendants or disadvantage of the plaintiff; I know nothing further which would be advantageous or disadvantageous to either party, and therefore I can't put it down.

JOSEPH CAIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of December, 1873, before me.

JOHN D. GREEN,
Commissioner.

ABRAHAM FRANK, of St. Louis (city), county of St. Louis, and State of Missouri, merchant, aged fifty-four years and upwards, being duly sworn and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Abraham Frank.

2. To the second interrogatory he saith: I live in the city of St. Louis, Missouri.

3. To the third interrogatory he saith: I have lived here seven years.

4. To the fourth interrogatory he saith: I am a wholesale dry-goods merchant, and I also sell fancy goods.

5. To the fifth interrogatory he saith: I have been in business seven years. My firm is A. Frank & Son, composed of myself and August Frank. I was formerly in partnership with J. Weil & Co.; I was the company.

6. To the sixth interrogatory he saith: My firm sells ticking in the course of our business.

7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with a brand of ticking marked A C A ticking, in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power-Loom, Manchester, N. H. I herewith file a sample of such ticking and the label thereon, marked Exhibit A, as part of my deposition.

8. To the eighth interrogatory he saith: I have never in the course of my business become acquainted with any other A C A ticking except that of the Amoskeag Manufacturing Company. I have seen another ticking, marked A C E.

9. To the 9th interrogatory he saith: I have only annexed one sample. I buy that kind of Gardner Brewer & Company, of New York. I don't know who makes this goods. I know they are the agents of the Amoskeag Manufacturing Company. This goods, of which I have annexed a sample, was bought by my firm in the course of our business, and we buy it by the bale.

10. To the tenth interrogatory he saith: I know only one A C A ticking, and that was manufactured by the Amoskeag Manufacturing Company, as I have always understood and now believe.

11. To the eleventh interrogatory he saith: I sold this Amoskeag A C A ticking more than fifteen years ago, when I was a merchant in Illinois. I know no other A C A ticking.

12. To the twelfth interrogatory he saith: The Amoskeag A C A ticking has a very fine reputation—the best in the market—amongst dealers and purchasers of ticking. I only know one A C A ticking that has a distinct and good reputation. I can only speak of the
70 Amoskeag A C A ticking, and how it stands in this market. I identify the sample herewith filed and marked Exhibit A as the Amoskeag A C A tick. Its reputation is very good. I have only heard of the Omega ticking, but I know nothing about its reputation. My customers ask for the A C A ticking, and I keep that for them. This is my leading brand. I identify the Amoskeag A C A filed herewith and marked Exhibit A.

13. To the thirteenth interrogatory he saith: This A C A Amoskeag is a good feather tick. My customers ask for it, and therefore I keep it. There may be other better ticks in the markets; if there are I don't know, and therefore can't swear to it.

14. To the fourteenth interrogatory he saith: My customers when they want the A C A ticking write for or ask for the A C A ticks, and they don't mention the grade, quality, or maker of the goods, but simply A C A ticks.

15. To the fifteenth interrogatory he saith: Most dealers when they wish the Amoskeag tick, that is of the A C A brand, designate it simply by the words A C A. They say I want so much of the A C A tick, and I very rarely hear the word Amoskeag mentioned in that connection. I have only filed one sample and label, and I speak of that make and brand of goods.

16. To the sixteenth interrogatory he saith: I have nothing to do with consumers; I am a wholesale merchant, and therefore I can't answer this question. I don't sell to consumers; I have no knowledge of the matter inquired of.

17. To the seventeenth interrogatory he saith: If I or other merchants in this locality should order ticks from jobbers, and designate them simply by the words A C A ticking, we would wish to purchase the

Amoskeag Manufacturing Company's A C A ticking, and would expect to receive that and that only, and I would expect to find on it a label precisely similar to the one filed herewith and marked Exhibit A.

18. To the eighteenth interrogatory he saith: In reply to this question I must say I have nothing to do with consumers; the consumers do not write to me or apply to me for ticks, and therefore I have no knowledege of the matter inquired of.

19. To the nineteenth interrogatory he saith: I know that A C A has been used to designate a certain ticking for fifteen years, and I know that those letters distinguished it from other tickings, the letters and the name both. These letters have designated a certain ticking known as A C A ticking, and, as I understand, is manufactured by the Amoskeag Manufacturing Company. I have filed a sample of the goods herewith marked Exhibit A.

20. To the twentieth interrogatory he saith: For seven years here, and for fifteen years altogether, I know that merchants and dealers and purchasers have been accustomed to designate a certain ticking as the A C A ticking. This is the Amoskeag A C A tick, and is manufactured, as I understand, by the Amoskeag Manufacturing Company. I can't speak of consumers. I have never sold this A C A ticks to consumers since I have been in this city.

21. To the twenty-first interrogatory he saith: I have been selling A C A ticks for fifteen years. I don't remember ever to have sold but the one A C A tick; and I have no knowledge sufficient to form an opinion on the subject inquired of.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the complainant containing, amongst other words, Amoskeag Manufacturing Company and the letters A C A, but I have no recollection of having seen a label containing the words and letters Omega A C A Ring Twist. I might have seen Omega ticks,
but I don't remember to have seen any Omega ticks with the
71 letters A C A; and as for the rest of this question I have no sufficient knowledge to form an opinion or belief.

23. To the twenty-third interrogatory he saith: I know nothing further that could be of any advantage to either of the parties to this suit nor anything that could be of any disadvantage to the plaintiff or defendants.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I remember well that I have known the Amoskeag A C A for fifteen years, but I know nothing about any other A C A tick; I have no writing from which I testify.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; I buy their goods and pay for them, and every thirty days I have to pay; I have never been their agent, and all the information I have in regard to the matter is derived from my own business in buying and selling their ticks; I have never done any business for said company.

X 3. To the third cross-interrogatory he saith: I know nothing about consumers of ticking; in my testimony I spoke of what purchasers would intend and understand and wish when ordering from me, and what I would understand when ordering from agents or jobbers.

X 4. To the fourth cross-interrogatory he saith: I know nothing about the Omega Ring Twist, and therefore I have no sufficient knowledge to form an opinion or belief.

X 5. To the fifth cross-interrogatory he saith: I know nothing fur-

ther that could be of advantage or disadvantage either to the plaintiff or defendants.

A. FRANK.

Examination taken, reduced to writing by me, and by the witness subscribed and sworn to before me, this 29th day of December, 1873.

JOHN D. GREEN,
Commissioner.

Not being able to complete the taking of depositions, owing to the lateness of the hour and the absence of witnesses, I hereby adjourn the taking of the same until to-morrow, the 30th day of December, 1873.

JOHN D. GREEN,
Commissioner.

JOHN T. DAVIS, of the city of St. Louis, and State of Missouri, and a merchant by occupation, aged twenty-nine years and upwards, being duly sworn, and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is John T. Davis.

2. To the second interrogatory he saith: I reside in the city of St. Louis, Missouri.

3. To the third interrogatory he saith: I was born and raised in St. Louis.

4. To the fourth interrogatory he saith: I am in the wholesale dry goods business.

72 5. To the fifth interrogatory he saith: I have been in business since the year 1863; I am a member of the firm of Samuel C. Davis & Company; the firm is composed of Samuel C. Davis, Andrew Sproule and John T. Davis; I take charge of the business outside of the office work; I buy and sell.

6. To the sixth interrogatory he saith: My firm purchase and sell ticking in the course of our business.

7. To the seventh interrogatory he saith: I have become acquainted with ticking labelled with the letters A C A in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Manchester, N. H.; I recognize the goods and label herewith filed and marked Exhibit A; I make it part of my deposition.

8. To the eighth interrogatory he saith: I think there are two brands of A C A besides the Amoskeag, but I am not certain. I know there is an Omega brand, and I think there is what is called the Easton A C A, but perhaps it is Easton A C E. It has been some time since we kept this Easton A C A or A C E. I know nothing about the label on the Omega A C A. I think the other is marked just Easton A C A, and no other letters on it. I have none of the labels, and I can get none that I know of, and therefore can't comply with the request.

9. To the ninth interrogatory he saith: The Amoskeag A C A, the sample and label marked Exhibit A, is made by the Amoskeag Manufacturing Company, and we purchase it of Gardner Brewer & Co., of Boston; but we have never have purchased the Omega A C A, and I don't remember the agent of the Easton A C A. We bought the Amoskeag and Easton goods in the course of our business as merchants, but we have never purchased the Omega. We purchase the goods in original packages.

10. To the tenth interrogatory he saith: Amoskeag A C A is manufactured by the Amoskeag Manufacturing Company. I don't know

who manufactures the Easton. D. Trainer & Sons make the Omega A C A, to the best of my knowledge and belief.

11. To the eleventh interrogatory he saith: I knew the Amoskeag A C A first, about ten years; I first became acquainted with it; I can't say how long I have known the balance; not so long as I have known the Amoskeag by some years.

12. To the twelfth interrogatory he saith: The A C A made by the Amoskeag Manufacturing Company is the best known and most favored by purchasers and dealers. The Easton is of poor quality and a low grade of tick, and not much esteemed by the public and dealers, and is what is known as straw tick in the trade. The Omega, to the best of my knowledge and belief, is a good tick, coming much nearer the quality of the Amoskeag goods. The above is my opinion of them, and I think the above is their reputation in this locality and this trade. I have only annexed one specimen, that of the Amoskeag goods of which I first spoke. These three tickings have a separate reputation amongst dealers and purchasers. I have stated the reputation of each in the former portion of this answer.

13. To the thirteenth interrogatory he saith: I consider the Amoskeag A C A the best; its superiority consists in excellence of manufacture and its uniformity, being always of the same quality, and being a general favorite with the trade.

14. To the fourteenth interrogatory he saith: Purchasers desiring to buy A C A ticking describe it sometimes as simply A C A, and sometimes they mention the brand therewith.

15. To the fifteenth interrogatory he saith: Dealers when they desire the Amoskeag A C A goods they simply designate it as A C A,
73 without mentioning the maker, but when they want the ot er brand they put the full name; I think I have answered this interrogatory fully.

16. To the sixteenth interrogatory he saith: I know nothing about consumers; you must go to the retailers to have this question answered; I know nothing about consumers or the retail business.

17. To the seventeenth interrogatory he saith: Each ticking is sold by a separate agent, and ordering goods from an agent we would expect the goods for which they were agents; we never buy such goods from jobbers, and therefore I can't answer this question more fully.

18. To the eighteenth interrogatory he saith: We don't sell to consumers, but if I should receive an order from consumers or any other person for A C A ticking, I would understand they meant the Amoskeag A C A ticking made by the Amoskeag Manufacturing Company, and the full label on it would be the same as Exhibit A.

19. To the nineteenth interrogatory: I do know and have known for ten years that the A C A ticking was a distinguishing designation of a certain article of ticking in the market; the Amoskeag A C A is so designated, and is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: I can't speak of consumers; merchants, dealers, and purchasers in this locality are in the habit of designating the Amoskeag A C A as A C A ticking, and this ticking is made by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have sold A C A ticks for ten years; there could be no confounding of the Amoskeag A C A and the Easton, and I have never sold the Omega A C A, and am not sufficiently acquainted with it to say; there is no resemblance between the tickets on the Easton goods and that on the Amoskeag goods.

22. To the twenty-second interrogatory he saith: I have seen the ticking with the label A C A, and containing amongst other things the words Amoskeag Manufacturing Company; I have also seen a label containing the words and letters Omega A C A Ring Twist; I don't think the resemblance between the two labels is sufficient to mislead any one who is at all acquainted with the two labels.

23. I don't know anything more that could be of any advantage or disadvantage to either the plaintiffs or defendants.

Cross-interrogatory:

X 1. To the first cross-interrogatory he saith: I base my statements on my memory alone; I have no written memoranda from which I testify.

X 2. To the second cross-interrogatory he saith: I am not the agent of Amoskeag Manufacturing Company; we purchase the goods from the agents; all the information I have is derived from selling goods in the course of business and dealing in them; we have never sold any goods for them.

X 3. To the third cross-interrogatory he saith: In testifying as to what consumers or purchasers would intend and understand by particular labels or tickets, I have been answering what purchasers would understand when ordering from me, and not what I would understand.

X 4. To the fourth cross-interrogatory he saith: I have already stated I do not think the public and purchasers of ticking would be likely to confound them.

X 5. To the fifth cross-interrogatory he saith: I know nothing
74 more that could be of any advantage or disadvantage to either the plaintiffs or defendants to this suit.

JNO. T. DAVIS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 30th day of December, 1873, before me,

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of witnesses, I adjourn the taking of depositions until December 31st, 1873.

JOHN D. GREEN.
Commissioner.

CORNELIUS VOORHIS, of the city of St. Louis, and State of Missouri, merchant by occupation, aged forty-six years and upwards, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Cornelius Voorhis.

2. To the second interrogatory he saith: I reside in St. Louis, Missouri.

3. To the third interrogatory he saith: I have resided in the city of St. Louis for twenty-seven years.

4. To the fourth interrogatory he saith: At present I am in the retail dry goods business.

5. To the fifth interrogatory he saith: About three months with my present partner, but I have been in the dry goods business, wholesale and retail, twenty-eight years as clerk and proprietor; my partner at present is J. W. Worthington.

6. To the sixth interrogatory he saith: My firm purchase and sell ticking in the course of our business.

7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with ticking marked A C A in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Manchester, N. H.; I recognize the ticking and label marked Exhibit A, as the genuine Amoskeag A C A tick, and annex it as part of my deposition; on some of the Amoskeag ticking there was a big medal of the Paris Exposition; I think this medal was on the A C A tick.

8. To the eighth interrogatory he saith: My impression is there was an inferior tick called the Omega A C A; I don't remember the other words except the Omega A C A; I don't know of but these two ticks marked A C A, that is, the Amoskeag and Omega A C A; I have no sample of the Omega A C A tick, and therefore can't annex any sample thereof hereto.

9. To the ninth interrogatory he saith: The Amoskeag A C A was and is manufactured by the Amoskeag Manufacturing Company, and Gardner Brewer & Company, of Boston, were their agents; I usually bought from Gardner Brewer & Company; I don't know who makes the Omega A C A; I don't remember who sold the goods to us; these tickings were bought by us in the course of our business; we purchased these Amoskeag goods in large quantities, and the Omega goods in small quantities.

10. To the tenth interrogatory he saith: The Amoskeag A C A is made by the Amoskeag Manufacturing Company; I don't know who makes the Omega A C A.

75 11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A in the year 1846; I became acquainted with the Omega A C A not earlier than the year 1866; this is to the best or my memory.

12. To the twelfth interrogatory he saith: The Amoskeag is known amongst purchasers and the public as a No. 1 tick, the best in the market; the Omega A C A amongst purchasers and the public has a reputation as a second or third class tick; the Amoskeag has a separate and distinct reputation amongst dealears as the very best tick; the Amoskeag A C A, a sample of which is hereto filed and marked Exhibit A, is known as the very best tick in the market; the Omega has no particular reputation; these two tickings have separate reputations with the public and purchasers thereof; the Amoskeag A C A has the best reputation of any tick in the country; by the Amoskeag A C A, I mean that ticking of which a sample is hereto annexed marked Exhibit A; the Omega has no particular reputation.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A is of the best quality; its superiority consists in its being closer and better made tick, and better adapted for a feather tick; it is closely woven.

14. To the fourteenth interrogatory he saith: When purchasers desired to buy the Amoskeag A C A ticking they asked simply for the A. C A ticking, and did not describe them as of any particular manufacture, grade, or quality; and they expected to get the Amoskeag A C A goods.

15. To the fifteenth interrogatory he saith: Dealers in tickings, when they wish the Amoskeag A C A goods, describe or designate them simply as A C A; but when they wish the Omega A C A, they designate it by

asking for the Omega A C A; I have only annexed one specimen to my deposition, and I refer to it when I speak of the Amoskeag A C A.

16. To the sixteenth interrogatory he saith: There is not more than one consumer in a hundred know' there is any other A C A tick except the Amoskeag A C A; they would say, give me some A C A tick, and if they did not get A C A Amoskeag tick they would think they had been cheated; if they were familiar with the Omega A C A, and desired to buy it, they would designate it by the words and letters Omega A C A.

17. To the seventeenth interrogatory he saith: If I or merchants in this locality should, in ordering ticking from jobbers or dealers, *should* designate the ticking as A C A ticking simply, we would intend and understand the Amoskeag A C A ticking, manufactured by the Amoskeag Manufacturing Company, and we would expect to find a label precisely similar and bearing the same letters, words, and figures as the one herewith filed and marked Exhibit A.

18. To the eighteenth interrogatory he saith: If a consumer desiring to purchase from me, or from any merchant in this locality, should ask for A C A ticking merely, I would understand that he wished to purchase the Amoskeag A C A ticking, and the full label would be precisely like the one herewith filed and marked Exhibit A.

19. To the nineteenth interrogatory he saith: I have known the Amoskeag A. C A tick for twenty-seven years, and I have known for that length of time that the letters A C A were the designation and distinguishing designation of the Amoskeag A C A ticking, and this ticking is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants and dealers in ticking, and purchasers and consumers thereof, to my knowledge, have been accustomed for twenty-seven years to designate a particular ticking as A C A ticking, and the ticking so particularly des-
76 ignated is the Amoskeag A C A ticking, and is and has been made by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have been selling the Amoskeag A C A ticking at wholesale and retail for the last twenty-seven years; whilst a wholesale merchant, I sold as much of that goods as any merchant in this city; I have sold very little of the Omega A C A; it would be very difficult to persuade an experienced person that the Omega A C A ticking was the same as the Amoskeag A C A ticking, but persons not experienced might be imposed upon; I don't remember the Omega label; it is so little used that I have not seen it for three years, and therefore I have no sufficient knowledge to enable me to answer this question more fully.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the complainants, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A; I suppose I have seen a label on ticking containing the words and letters Omega A C A Ring Twist, but I don't remember the Ring Twist; I have sold the Omega A C A; I do know I have sold the goods about three years ago, but I don't remember that the words Ring Twist were on the label; a person versed in the goods could not be deceived; inexperienced persons might be imposed on.

23. To the twenty-third interrogatory he saith: I know nothing more that is material to either side of this case, and nothing more that could be of an advantage to either side of this case; and to sum up I answer no to this twenty-third interrogatory.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I base my statements

simply from my recollection; I have no memorandum or written entry from which I testify, but merely from my recollection.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; I have no arrangement to sell their goods; I have never been their agent; all the information I have is derived from buying and selling their goods; I have never done any business for them.

X 3. To the third cross-interrogatory he saith: When I testified as to what consumers and purchasers would intend and understand by particular labels, I testified as to what the consumers and purchasers t hemselves, and not as to what I, myself, would understand by this label, although I now say that we would understand it the same way.

X 4. To the fourth cross-interrogatory he saith: I have never known the words Ring Twist to be mistaken for the words Amoskeag Manufacturing Company: I know nothing positively about the Ring Twist or the Omega Ring Twist; I state here, as I have stated before, with inexperienced persons the Omega A C A Ring Twist might be passed for the Amoskeag A C A.

X 5. To the fifth cross-interrogatory he saith: I know nothing further to the best of my memory which could possibly be to the advantage of the defendants or disadvantage of the complainants.

CORNELIUS VOORHIS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 31st day of December, 1873, before me,

JOHN D. GREEN,
Commissioner.

77 JOHN VOGEL, of the city of St. Louis, State of Missouri, and aged forty years and upwards, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: My name is John Vogel.

2. To the second interrogatory he saith: I reside in the city of St. Louis, Missouri.

3. To the third interrogatory he saith: I have lived here about twenty years.

4. To the fourth interrogatory he saith: I am in the wholesale commission dry goods.

5. To the fifth interrogatory he saith: I have been in the dry-goods business ever since the year 1856, as clerk and proprietor; my present partners, Walter M. Smith and Andrew B. Hopkins.

6. To the sixth interrogatory he saith: My present firm does not purchase ticking, but we do sell ticking; formerly we sold ticking when we were in the jobbing trade.

7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with ticking labelled with the letters A C A in connection with the words Amoskeag Manufacturing Company, Power Loom, Manchester, N. H.; this is what we call the Amoskeag A C A; I recognize the specimens hereto filed as a true specimen of the original A C A or Amoskeag A C A, and the label thereon marked Exhibit A, as the label generally coming with the Amoskeag A C A ticking.

8. To the eighth interrogatory he saith: I have never met with any other A C A ticking except the Amoskeag A C A.

9. To the ninth interrogatory he saith: We were accustomed to buy this Amoskeag A C A of Gardner, Brewer & Co., of New York; this Amoskeag A C A is made by the Amoskeag Manufacturing Company,

and I understand that the firm of Gardner, Brewer & Co. is interested in this manufacturing company; we bought this Amoskeag A C A in the course of our trade as merchants; we always kept it; we could not do without it.

10. To the tenth interrogatory he saith: I believe that the Amoskeag A C A ticking is manufactured by the Amoskeag Manufacturing Company; I know nothing about any other A C A ticking.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A when I first went into the dry-goods business in 1856; I never became acquainted with any other A C A ticking.

12. To the twelfth interrogatory he saith: The Amoskeag A C A has a No. 1 reputation among dealers, purchasers, and the public; amongst the dealers in this locality the Amoskeag A C A has a particular reputation; I know nothing about any other A C A tick; the Amoskeag, of which I have annexed a sample and label marked Exhibit A, has a No. 1 reputation: I can only speak of the Amoskeag; it has with the public and the purchasers a No. 1 reputation; I have only spoken of the Amoskeag A C A ticking.

13. To the thirteenth interrogatory he saith: I can't say which is of the best quality, because I do not know the others; the Amoskeag A C A ticking has none or very little starch, is of fine thread, and is the one known for a long time as being alone fit to hold feathers.

14. To the fourteenth interrogatory he saith: Not one person in a hundred when they wish to purchase the Amoskeag A C A tick
78 ask for or describe it as Amoskeag A C A tick, but they say A C A tick alone; I speak now of purchasers alone.

15. To the fifteenth interrogatory he saith: The dealers simply call them A C A tick, instead of the Amoskeag A C A tick; my whole deposition has reference to the Amoskeag A C A tick; I am unacquainted with all other A C A tickings.

16. To the sixteenth interrogatory he saith: The better posted of consumers in the dry goods line when they wish to purchase the Amoskeag A C A tick, order A C A ticking simply; I speak of the Amoskeag ticking alone; I speak of the Amoskeag A C A tick, a sample of which, with a label marked Exhibit A pasted thereon, is herewith filed as part of this deposition; I know no other A C A tick.

17. To the seventeenth interrogatory he saith: If I should order of jobbers ticking, and should use simply the term A C A tick, I would intend and understand the Amoskeag A C A, manufactured by the Amoskeag Manufacturing Company, and I would expect to find a label on it like the one filed herewith and marked Exhibit A; and I suppose this would be the case with all the merchants in this locality.

18. To the eighteenth interrogatory he saith: If a consumer should wish to buy ticking of me, and ask simply for the A C A ticking, I would understand him to mean the Amoskeag A C A ticking, manufactured by the Amoskeag Manufacturing Company; and, as I said before, the full label on said ticking would be just like the one annexed and marked Exhibit A.

19. To the nineteenth interrogatory he saith: I do now know and have known for the last eighteen years that A C A was the distinguishing designation of a certain article of ticking in the market; to the best of my knowledge the Amoskeag A C A tick is and has been so designated, and is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants and dealers in ticking and consumers do now, and have for the last eighteen years been accustomed to designate the Amoskeag A C A ticking as simply

A C A ticking; and I know that this ticking is manufactured by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have been selling Amoskeag A C A ticking for the last eighteen years in a wholesale way; I can't answer this question, from the fact that I have never seen any other A C A ticking, except the Amoskeag A C A ticking, nor have I ever seen any ticking labelled with the letters A C A, except the Amoskeag A C A ticking, therefore I have no knowledge of the matter inquired of in the latter portion of this interrogatory.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A; I don't remember ever to have seen a label on ticking containing the words and letters Omega A C A Ring Twist; I can't answer the latter part of this interrogatory, simply from the fact that I have never to my recollection seen any of the Omega Ring Twist; I have no knowledge of the matter inquired of in the latter portion of this interrogatory.

23. To the twenty-third interrogatory he saith: I do not know anything further which may be of benefit or advantage to either of the parties at issue; I know of nothing further that may be material to the subject of this examination nor to the matters in question.

Cross-examination:

79 X 1. To the first cross-interrogatory he saith: I know I have been in business eighteen years, and I know I got acquainted with the goods as soon as I went into business; my mind was impressed by the great demand of the goods; I never knew but the one A C A ticking; that is, the Amoskeag A C A; I have no memorandum.

X 2. To the second cross interrogatory he saith: I am not the agent for the Amoskeag Manufacturing Company. I don't sell their goods now. I have never done any business for them. I derived my information from dealing in their goods, but not as their agent.

X 3. To the third cross-interrogatory he saith: I meant what I said in speaking of consumers and purchasers. I testified what they would intend and understand by particular labels.

X 4. To the fourth cross-interrogatory he saith: I never said that the public and purchasers would or might confound the words Amoskeag Manufacturing Company with Omega Ring Twist.

X 5. To the fifth cross-interrogatory he saith: I know nothing further that could possibly be of an advantage or disadvantage to either the complainant or defendants in this case.

JOHN VOGEL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 31st of December, 1873.

JOHN D. GREEN,
Commissioner.

Not being able to complete the taking of depositions, owing to the lateness of the hour and the absence of witnesses, I hereby adjourn the taking of the same until to-morrow, the 1st day of January, 1874. This 31st of December, 1873.

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of witnesses, I adjourn the taking of depositions to to-morrow, the 2d day of January, 1874. This January 1st, 1874.

JOHN D. GREEN,
Commissioner.

CONRAD OTTMER, of the city of St. Louis, and State of Missouri, merchant by occupation, and aged forty-five years and upwards, being duly sworn and examined on the part of the complainants, doth depose and say, as follows:

1. To the first interrogatory he saith: My name is Conrad Ottmer.

2. To the second interrogatory he saith: I reside in St. Louis, Missouri.

3. To the third interrogatory he saith: I have resided in St. Louis about twenty-five years.

4. To the fourth interrogatory he saith: I am a retail dry goods and clothing merchant.

5. To the fifth interrogatory he saith: I have no partner at present. I have been in business for myself seven years.

6. To the sixth interrogatory he saith: I sell ticking and purchase it in the course of my employment.

80 7. To the seventh interrogatory he saith: I have sold ticking labelled with the letters A C A; as far as I know it had the words Amoskeag Manufacturing Company. A. D. 1836, Power Loom, Manchester, N. H.; it looked like the label filed herewith and marked Exhibit A; I can't say that the label was precisely like this label; I think the specimen herewith filed is what is called the Amoskeag A C A ticking; that is, it looks like it; although there is another ticking just like this, only a little rougher; I think it is made by the same parties; it is call Pearl River; I think that is what they call it.

8. To the eighth interrogatory he saith: I have never met any other ticking but this one marked with the letters A C A.

9. To the ninth interrogatory he saith: I do not know who manufactures this ticking; I know nothing about who makes it. I speak of the ticking, a sample of which is herewith filed. I know no other A C A ticking. I have bought some of this ticking from Weil & Bro., sometimes from A. Frank & Son, and sometimes from Samuel C. Davis & Co. I bought the Amoskeag A C A in the course of my business as a merchant.

10. To the tenth interrogatory he saith: As far as I know and believe the Amoskeag A C A ticking is made by the Amoskeag Manufacturing Company; I know of no other A C A tick.

11. To the eleventh interrogatory he saith: I became acquainted with this Amoskeag A C A ticking about seventeen or eighteen years ago. I never became acquainted with any other A C A ticking that I know of.

12. To the twelfth interrogatory he saith: So far as I know dealers and the public and purchasers like this Amoskeag A C A tick. If they ask for the best tick, I give them that. I don't know whether this ticking A C A has a separate and distinct reputation amongst dealers or not. I keep it, and it is the best tick I have. I can't speak of but one A C A ticking. I can't say whether this Amoskeag A C A ticking has a separate and distinct reputation with the public and purchasers or not; and I know no other A C A ticking.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A

ticking is the best tick I know. It is a good feather tick. I speak of the Amoskeag A C A tick. I know of no other A C A tick.

14. To the fourteenth interrogatory he saith: The most persons ask me for the best tick, and I give them this Amoskeag A C A tick; others examine the tick themselves, and take it after examining it; some of them ask for the Amoskeag A C A tick, and some ask simply for the A C A tick; the most ask me for the best tick. This is the best answer I can make to this question.

15. To the fifteenth interrogatory he saith: Persons who deal in ticking designate this Amoskeag A C A ticking simply as A C A ticking when they wish to purchase it. I can't speak of other A C A goods, as I know but the one A C A tick. I speak of the Amoskeag A C A goods, I know of no others, a sample of which is herewith filed marked Exhibit A.

16. To the sixteenth interrogatory he saith: Consumers as a general thing know nothing of brands and labels. They ask for the best tick or cheap tick. I know nothing further to answer this interrogatory.

17. To the seventeenth interrogatory he saith: If I should order ticking of jobbers or wholesale dealers, and order A C A ticking, I would intend and understand the Amoskeag A C A tick, and I would expect the same kind and with a label precisely like the one herewith filed and marked Exhibit A; and I think other merchants in this
81 locality would have the same intention and expectation under the same circumstances.

18. To the eighteenth interrogatory he saith: If a consumer should desire to purchase ticking of me, and ask simply for A C A ticking, I would think he knew something about ticking, and would understand him to mean the Amoskeag A C A ticking, just like the ticking filed herewith with its label marked Exhibit A.

19. To the nineteenth interrogatory he saith: I know and have known for the last seventeen or eighteen years the letters A C A as the distinguishing designation of a particular article of ticking; the Amoskeag A C A ticking has been so designated, and to the best of my knowledge it is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: To the best of my knowledge, and as far as I believe, merchants, dealers in ticking, purchasers and consumers thereof, have been accustomed to designate the Amoskeag A C A ticking as the A C A ticking; and they have been accustomed to do this for as long as I have been in business.

21. To the twenty-first interrogatory he saith: I have been selling the A C A ticking in a retail way for seventeen or eighteen years; I can't answer this question, because I know of no other A C A ticking except the Amoskeag A C A ticking, and to the best of knowledge I never heard of any other A C A ticking except the Amoskeag A C A ticking.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the complainants, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A; but I don't remember ever to have seen a label or ticket containing the words Omega A C A Ring Twist; I therefore can't answer the latter part of this interrogatory, as I have no opinion about the matter and have no knowledge of the matter inquired of.

23. To the twenty-third interrogatory he saith: I know nothing further; no other matter or thing which can benefit or be of advantage to either of the parties in this case, or material to the subject in dispute.

Cross-examination:

X 1. To the first cross-interrogatory: I have no written statement or memorandum from which I testify; I do it from my memory.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company. I have nothing to do with it; I buy the goods and sell them. I have not been their agent; all my information I derived from dealing in their goods.

X 3. To the third cross-interrogatory he saith: I was speaking of the consumers and purchasers; I would think they would know some of ticks.

X 4. To the fourth cross-interrogatory he saith: I never said that the public might confound the words Amoskeag Manufacturing Company with Omega Ring Twist; I know nothing about any such mistake having been made.

X 5. To the fifth cross-interrogatory he saith: I know nothing further advantageous to the defendants or disadvantageous to the complainants.

C. OTTMER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 2d day of January, 1874, before me.

JOHN D. GREEN,
Commissioner.

82 JOSEPH W. WOTHINGTON, of the city of St. Louis, Missouri aged forty-one years and upwards, and merchant by occupation, being duly sworn and examined on the part of the complainants, doth depose and say, as follows:

1. To the first interrogatory he saith: My name is Joseph W. Worthington.

2. To the second interrogatory he saith: I reside in the city of St. Louis, State of Missouri.

3. To the third interrogatory he saith: I have lived in St. Louis thirty years.

4. To the fourth interrogatory he saith: I am a retail dry goods merchant.

5. To the fifth interrogatory he saith: I have been in the retail dry goods business for twenty years; I have had several partners—James Porter, E. C. White—Cornelius Woorhes is my partner at the present in that business; I am the buyer and general supervisor.

6. To the sixth interrogatory he saith: My firm sells tickings in the course of our business.

7. To seventh interrogatory he saith: Yes, sir; I have in the course of my business became acquainted with tickings labelled with the letters A C A in connection with the words Amoskeag Manufacturing Company, Power Loom, Manchester; I hereby refer to the ticking and the label thereon, marked Exhibit A, and make it part of my deposition.

8. To the eighth interrogatory he saith: I don't think I have ever become acquainted with any other ticking labelled amongst other things with the letters A C A, except the Amoskeag A C A ticking; I have seen other letters on ticking, but I never paid any particular attention to them.

9. To the ninth interrogatory he saith: This Amoskeag tick is the only one I annex, and is manufactured to the best of knowledge by the Amoskeag Manufacturing Company; my firms were accustomed to buy them from the jobbers in New York; Geo. Bliss & Company, Claflin,

Opedyke, and various others; we bought this ticking, that is, the Amoskeag A C A, in the course of our business; this is the only A C A I know anything about.

10. To the tenth interrogatory he saith: I suppose the Amoskeag Manufacturing Company make this Amoskeag A C A; I see their name on the goods; that is the only way I have of knowing.

11. To the eleventh interrogatory he saith: I know only one A C A ticking, and I have known that for twenty years; and I know of no other ticking marked A C A except the one, a sample of which I see before me marked Exhibit A.

12. To the twelfth interrogatory he saith: Amongst dealers, the public and purchasers the A C A ticking is considered the best goods that are used, and the easiest goods sold; I know only one A C A; that is the Amoskeag A C A, and that has a distinct and separate reputation; I mean the ticking of which Exhibit A is a sample; the Amoskeag A C A has the reputation of being tip-top, first-class, A No. 1.

13. To the thirteenth interrogatory he saith: The A C A ticking is considered the best tick, and is the best for feathers; and no house is considered a complete house unless it has a stock of the A C A tick.

14. to the fourteenth interrogatory he saith: When purchasers
83 want the A C A ticks, they simply ask for the A C A tick, they say nothing about make, grade, and quality, but demand simply A C A tick and buy it.

15. To the fifteenth interrogatory he saith: When dealers want the A C A tickings they ask for the A C A ticking simply, or for the best feather ticking, or for the best ticking that is made; I only speak of one A C A ticking; when I speak of A C A ticking I mean the Amoskeag ticking, of which the label and ticking marked Exhibit A is a sample.

16. To the sixteenth interrogatory he saith: When consumers want the Amoskeag A C A ticking they ask simply for the A C A ticking; of course consumers do not know the manufacturers; I know no other A C A ticking except the Amoskeag.

17. To the seventeenth interrogatory he saith: If I or merchants in this locality should wish to purchase tickings, and should order A C A tickings simply, we would intend and understand the Amoskeag A C A tick made by the Amoskeag Manufacturing Company; and we would expect to find on it a label similar to the one filed with these depositions and marked Exhibit A.

18. To the eighteenth interrogatory he saith: If a consumer should desire to purchase ticking and should ask for A C A ticking simply, I would understand him to mean the A C A tick made by the Amoskeag Manufacturing Company; and the full label would be Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Y'ds, A C A, Manchester, N. H., like the one marked Exhibit A.

19. To the nineteenth interrogatory he saith: I have known that A C A has been, for the last twenty or twenty five years, *has been* the distinguishing designation of a certain article of ticking in the market; the Amoskeag A C A has been so distinguished, and it is, to the best of my knowledge, made by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants, dealers, purchasers and consumers in this locality, to my knowledge for the last twenty or twenty-five years, have been accustomed to designate a certain article of ticking as A C A, and this ticking is the A C A ticking made by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have been selling A C

A ticking for twenty or twenty-five years; I have only annexed one sample and label of A C A ticking; when purchasers come to buy ticking they look at the letters; when they come to buy A C A ticking they look at the letters A C A, and do not look at the rest of the label; but if they see the letters A C A they are satisfied and buy the goods, and I think that if any other ticking had a label, and the label had the letters A C A on it, that they might be deceived and led to believe that other make was the genuine A C A goods, that is, the Amoskeag A C A ticking; and that is if the goods was anything like the goods they were in a habit of buying as A C A.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A; since you mention the name of Omega A C A Ring Twist, I remember to have seen ticking marked with a label containing the words Omega A C A Ring Twist; yes, sir. The public and purchasers desiring to purchase the Amoskeag A C A could in many instances be deceived and led to believe that this Omega A C A was the genuine Amoskeag A C A.

23. To the twenty-third interrogatory he saith: I know nothing further that could be any advantage to either the plaintiffs or defendants, and nothing further that could be of any disadvantage to either party.

84 Cross-examination:

X 1. To the first cross-interrogatory he saith: From my first retailing of dry goods. I became acquainted with the Omega A C A in the last year or two, when my attention was drawn to it; I have no memoranda or written entry from which to testify.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company. I buy the goods in New York or St. Louis. All the information I have is derived from my dealing in their goods, but not as their agent. I have never done any business for them.

X 3. To the third cross-interrogatory he saith: I was testifying what consumers and purchasers would intend and understand by particular labels, and not what I would understand; but I should understand it the same way.

X 4. To the fourth cross-interrogatory he saith: I have never known such a mistake to have occurred; such a mistake might take place here amongst all classes; they look at the letters alone; they don't look at the maker, and don't care about the makers; they know the A C A ticking, and are accustomed to use it; they go by the letters.

X 5. To the fifth cross-interrogatory he saith: I know nothing further that could be any advantage or disadvantage to either party, beyond what I have already stated.

J. W. WORTHINGTON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 2d day of January, 1874, before me.

JOHN D. GREEN,
Commissioner.

Not being able to finish the taking of these depositions, owing to the lateness of the hour and to the fact that I was not able to procure the attendance of more witnesses, I hereby adjourn the taking of the same

until to morrow, the 3d day of January, 1874. This 2d day of January, 1874.

JOHN D. GREEN,
Commissioner.

DUGALD CRAWFORD, of the city of St. Louis, State of Missouri, by occupation merchant, aged forty-three years and upwards, being duly sworn and examined on the part of the complainants, doth depose and say:

1. To the first interrogatory he saith: Dugald Crawford is my name.
2. To the second interrogatory he saith: I live in the city of St. Louis, Missouri.
3. To the third interrogatory he saith: I have lived in St. Louis since 1864.
4. To the fourth interrogatory he saith: I am a retail dry goods merchant.
5. To the fifth interrogatory he saith: I have been in the dry goods business for twenty-seven years; but in my present business seven years; A. Russell is my partner now.
6. To the sixth interrogatory he saith: My firm purchases and sells ticking in the course of our business.
7. To the seventh interrogatory he saith: I have become acquainted with the A C A ticking whilst I was a clerk; the other words were, in connection therewith, Amoskeag Manufacturing Company, Power Loom, Manchester, N. H.; I herewith file the ticking and label marked
85 Exhibit A as part of my deposition, and recognize the ticking and label as the genuine Amoskeag A C A tick.
8. To the eighth interrogatory he saith: I have never became acquainted with any other A C A ticking except this Amoskeag A C A; I have heard of another A C A ticking, called the Omega A C A tick; I never saw it and never bought it; I don't keep the ticking, and therefore can't annex any specimen of it here.
9. To the ninth interrogatory he saith: The Amoskeag A C A ticking, the only one I know, is made by the Amoskeag Manufacturing Company; I buy this Amoskeag A C A ticking from merchants in this city; Samuel C. Davis & Co., Henry Bell & Son, and from other houses in this city; we can buy them here as cheap as we can in the east, and we buy them here; this Amoskeag was bought by us in the course of our business as merchants.
10. To the tenth interrogatory he saith: The Amoskeag A C A is made by the Amoskeag Manufacturing Company; I do not know who makes the Omega A C A; and I know nothing about any other A C A ticking.
11. To the eleventh interrogatory he saith: I lived in Canada before I came here, which was in 1864; in the year 1864, when I first came here, I became acquainted with the Amoskeag A C A ticking; I first knew there was another A C A ticking about a month ago, but I have never seen it that I remember of.
12. To the twelfth interrogatory he saith: Amongst dealers, the public and purchasers the A C A tick has a good reputation; I mean by A C A tick the Amoskeag A C A ticking; no first-class dry goods store can get along without it; I have never seen the Omega tick; the Amoskeag A C A has a separate and distinct reputation as to quality; I only know the one Amoskeag A C A; the Amoskeag A C A tick has the reputation of being honest goods, and there is always a demand for

them; I speak of that ticking a sample of which is filed with these depositions and marked Exhibit A.

13. To the thirteenth interrogatory he saith: I can't answer this question; I never saw the Omega that I remember of.

14. To the fourteenth interrogatory he saith: Purchasers who desire to buy the A C A goods, say simply A C A ticking and don't mention the words Amoskeag; as far as I remember no one ever asked me for the Omega A C A.

15. To the fifteenth interrogatory he saith: Just A C A ticks; if I were writing an order for A C A tick, I would write for so many pieces of A C A ticks; I would not ask the price, for I know we would get them at quotations; I only speak of the Amoskeag goods; I know nothing about other A C A goods, except from hearsay.

16. To the sixteenth interrogatory he saith: When consumers want to purchase the Amoskeag A C A tick, they ask simply for A C A ticking; I speak of that A C A ticking made by the Amoskeag Manufacturing Company, of which a sample and label marked Exhibit A has been herewith filed.

17. To the seventeenth interrogatory he saith: If I or merchants in this locality should order ticking from jobbers or dealers therein, and should describe the ticking as A C A ticking merely, we would intend and understand the A C A ticking made by the Amoskeag Manufacturing Company; and we would expect to find a label on it containing the words and letters Amoskeag Manufacturing Company, Power Loom, A C A, Manchester, N. H.

18. To the eighteenth interrogatory he saith: If a consumer should, in this locality, ask for A C A ticking, I would show them the
86 Amoskeag A C A ticking, and would understand them to mean that ticking; and the label would be the same as the one made part of these depositions and marked Exhibit A.

19. To the nineteenth interrogatory he saith: I know and have known since 1864, A C A ticking as the distinguishing name of a certain article of ticking in this market; it is the Amoskeag A C A ticking, is so called and designated, and it is made by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: I do know and have known ever since 1864, that merchants and dealers, and purchasers and consumers of tickings have been accustomed to, and do now, designate a certain article of ticking, made by the Amoskeag Manufacturing Company, as A C A ticking.

21. To the twenty-first interrogatory he saith: I have had nearly ten years' experience, as salesman and merchant, in selling these A C A tickings; I never saw any other A C A label except the Amoskeag A C A label; if the labels are similar, and have A C A on them, I don't see why they could not be persuaded that one ticking was another; I think that all you would have to do, to show them the A C A on it, and nothing further.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A; I do not remember ever to have seen a label containing the words Omega A C A Ring Twist; but I think if this Omega A C A Ring Twist label has a general appearance like that on the Amoskeag goods, and if the quality of the goods is near the same, and the letters A C A are at all prominent, purchasers could be readily deceived, and be made to suppose that this Omega A C A is the genuine Amos-

keag A C A ticking; I mean to say the general public would be so deceived, not merchants.

23. To the twenty-third interrogatory he saith: I know nothing further that could be of any benefit to either of the parties in this case, and nor do I know anything further material to either side.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I said I knew the Amoskeag A C A tick in 1864; and I don't know the other yet, except from hearsay; I have no written memorandum about me; we keep the goods all the time.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; we sell their goods as we sell all goods; we buy the goods at 30 days, and pay for them.

X 3. To the third cross-interrogatory he saith: I was testifying as to what consumers and purchasers would understand and mean; I would understand it the same way when ordering ticking from dealers; I know only A C A ticking that I ever saw.

X 4. To the fourth cross-interrogatory he saith: Such a mistake could be made in any locality, amongst all classes of education; if they go into an honorable store they will not have some goods palmed off on them for others; I know of no case of the kind.

X 5. To the fifth cross-interrogatory he saith: I know the Amoskeag tick to be a popular brand, which any dry goods house are obliged to have; further I have no knowledge of anything of advantage to
87 the defendants, or of disadvantage to the plaintiffs; this is a very uninteresting subject to me.

D. CRAWFORD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 3d day of January, 1874, before me.

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of the other witnesses, I hereby adjourn the further taking of depositions until day after to-morrow, being Monday, the 5th day of January, 1874. This 3d day of January, 1874.

JOHN D. GREEN,
Commissioner.

Not being able to continue the taking of depositions, on account of absence of witnesses, I hereby adjourn the taking of the same until to-morrow, the 6th of January, 1874.

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of the other witnesses, I hereby adjourn the taking of depositions until to-morrow, the 7th day of January, 1874. This 6th day of January, 1874.

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of the other witnesses, I hereby adjourn the taking of depositions until to-morrow, the 8th day of January, 1874. This 7th day of January, 1874.

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of witnesses, I adjourn the taking of depositions until to-morrow, the 9th day of January, 1874. This 8th of January, 1874.

JOHN D. GREEN,
Commissioner.

Not being able to procure the attendance of witnesses, I adjourn the taking of depositions until to-morrow, the 10th day of January, 1874. This 9th day of January, 1874.

JOHN D. GREEN,
Commissioner.

JOHN BOHAN, of the city of St. Louis, and State of Missouri, and salesman by occupation, aged twenty-nine years and upwards, being duly sworn, and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is John Bohan.

2. To the second interrogatory he saith: I reside in St. Louis, Missouri.

3. To the third interrogatory he saith: I have lived in St. Louis altogether four years.

4. To the fourth interrogatory he saith: I am a dry goods salesman.

5. To the fifth interrogatory he saith: I have been in the dry goods business altogether fourteen years; but with my present employers about three years; my present employers are Scruggs, Vandervoort & Barney; I am a salesman in this firm.

6. To the sixth interrogatory he saith: My employers purchase and sell ticking in the course of their business.

88 7. To the seventh interrogatory he saith: I have become acquainted with ticking labelled with the letters A C A, and in connection therewith the words Amoskeag (here the ticking and label marked Exhibit A was shown to the witness). I can't swear to the ticking or label. I never examined the label on Amoskeag ticking sufficiently to swear to it. I have no specimen of ticking or label to which I can swear. I think the specimen hereto filed is the Amoskeag tick, but I never noticed the label sufficiently to identify it.

8. To the eighth interrogatory he saith: I have only become acquainted actually with one A C A ticking, and that is the Amoskeag A C A ticking; that is, I have never seen, met, or handled any other brands. I have heard of other brands. I can't remember the names just now. I have no specimen of these other A C A tickings, nor their labels, and therefore can't file any specimen thereof. I think the words in connection with A C A on these tickings were Connestoga, but I don't remember and can't swear positively.

9. To the ninth interrogatory he saith: I don't know by whom any of these tickings were manufactured. I have purchased for our firm some of the Amoskeag goods from Samuel C. Davis & Co. I have purchased some from Dodd, Brown & Company. I don't know from whom in New York our firm buys ticking; they buy there sometimes. I buy the ticking generally. I have never purchased any other A C A ticking except the Amoskeag A C A, nor has the firm of Scruggs, Vandervoort & Barney done so to my knowledge.

10. To the tenth interrogatory he saith: I believe that the Amoskeag A C A ticking is made by the Amoskeag Manufacturing Company. I know nothing about the other A C A tickings, and have no belief on the subject.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A ticking in the year 1868. I never knew that any other A C A ticking was in existence until within the last six months. I think the other ticking is the Connestoga A C A.

12. To the twelfth interrogatory he saith: I don't know what the reputation of the Connestoga A C A ticking is. I don't know the reputation of the Amoskeag A C A with dealers, purchasers, or the public. The Connestoga has a distinct reputation with persons who deal in it in this locality. The Amoskeag has a separate and distinct reputation with persons who deal in them in this locality. The Amoskeag has the reputation of being a very good tick. I don't think the reputation of the Connestoga is as good as that of the Amoskeag. From my knowledge I can't say that they have any separate reputation amongst purchasers and the public.

13. To the thirteenth interrogatory he saith: I can't say anything about the quality of the Connestoga. The Amoskeag's superiority consists of the closeness, heft of texture, and its durability.

14. To the fourteenth interrogatory he saith: Purchasers do not ask for ticking by the letters A C A. I speak of purchasers in the retail trade. They come in and ask for ticking, and they judge it after having examined it. They don't know the names of the ticking.

15. To the fifteenth interrogatory he saith: I can only speak of the Amoskeag A C A. When they want the Amoskeag A C A, they ask for the Amoskeag A C A. I speak of dealers. I can't answer this latter portion of this interrogatory, as I have not annexed any samples, and have no knowledge of the matter inquired of.

16. To the sixteenth interrogatory he saith: Purchasers do not specify any particular ticking. They never ask for any particular ticking. They never know the brands of tickings, and I can't answer this latter
89 portion of this interrogatory, as I have not annexed any sample, and have no knowledge of the matter inquired of.

17. To the seventeenth interrogatory he saith: If I or merchants in this locality should, in ordering tickings from a jobber or wholesale dealer therein, describe the tickings we wish to purchase as A C A ticking merely, we would intend and understand the Amoskeag A C A ticking; the label I would expect to find is a blue label, that is what I should look for; I don't know what the full label is, I can't give the words; I know the label when I see it.

18. To the eighteenth interrogatory he saith: If a consumer who desired to purchase ticking from me should ask for A C A ticking merely, I should understand him to mean the Amoskeag A C A tick; I can't speak for other merchants, or what they would understand; I can't describe the full label or ticket on such goods.

19. To the nineteenth interrogatory he saith: I knew in 1868 that A C A ticking was a distinguishing designation of a certain ticking in the market, but lately I became acquainted with another brand; this acquaintance is not actual acquaintance, but I have seen the name mentioned in the market quotations; the Amoskeag A C A is the one so designated, but I don't know by what persons it is manufactured, but it is branded Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants and dealers in this locality, to my knowledge, have been for five years, and are now accustomed to designate the Amoskeag A C A tick as the A C A tick; this tick is made by the manufacturing company; purchasers and consumers in this locality have not been in the habit of designating the Amoskeag A C A tick as the A C A tick.

21. To the twenty-first interrogatory he saith: I have been selling tick marked A C A off and on for the last five years; in my opinion the public and purchasers of ticking are not acquainted with the different brands and labels of tickings, and therefore they could not have one label substituted for another; they know no brand; this is my idea in reference to this locality.

22. To the twenty-second interrogatory he saith: I have seen ticking of the complainants marked with the label containing the words Amoskeag Manufacturing Company and the letters A C A; I have never seen a label on ticking containing the words and letters O nega A C A Ring Twist, and therefore I can't answer the latter part of this interrogatory; I know nothing of the matter inquired of in the latter portion of this twenty-second interrogatory.

23. To the twenty-third interrogatory he saith: I do not know anything further that could be of any advantage or disadvantage to either of the parties, nor material to the case.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I base my statement as to my acquaintance with the Amoskeag A C A from seeing it in the stock; I never knew any other A C A tick personally except the Amoskeag A C A; I have no written memorandum from which I testify.

X 2. To the second general cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; I am a salesman in the retail store of Scroggs, Vandervoort & Barney, who buy and sell tickings; I have never been agent for the Amoskeag Manufacturing Company, but all my information in regard to the Amoskeag A C A tick is derived from my experience in buying and selling it; I have never done any business for the Amoskeag Manufacturing Company.

X 3. To the third cross-interrogatory he saith: Consumers and
90 purchasers in this locality don't know the labels and brands of tickings, and consequently I speak of them separately and distinctly from myself; and to this interrogatory I answer, no.

X 4. To the fourth cross-interrogatory he saith: I never said that the words Amoskeag Manufacturing Company might be confounded with the words Omega Ring Twist. I never knew of such a mistake having been committed.

X 5. To the fifth cross-interrogatory he saith: I know nothing further to the advantage or disadvantage of either of the parties to this suit.

JOHN BOHAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 10th day of January, 1874, before

JOHN D. GREEN,
Commissioner.

HENRY MILLER, of the city of St. Louis, State of Missouri, salesman by occupation, aged twenty-seven years and upwards, being duly sworn, and examined on the part of plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Henry Miller.

2. To the second interrogatory he saith: I reside in the city of St. Louis, Missouri.

3. To the third interrogatory he saith: I have lived in St. Louis about fifteen years.

4. To the fourth interrogatory he saith: I am a dry goods salesman.

5. To the fifth interrogatory he saith: I have been in the dry goods

business about five years. I am employed by the firm of Scruggs, Vandervoort & Barney as salesman.

6. To the sixth interrogatory he saith: My employers purchase and sell tickings all the time in the course of our business.

7. To the seventh interrogatory he saith: I have in the course of our business become acquainted with ticking labelled or lettered with the letters A C A. I am certain they had also the words Amoskeag Manufacturing Company. (Here the exhibit marked Exhibit A was shown the witness.) I know this ticking is the Amoskeag A C A ticking, but I can't identify the label. I have no specimen except the one marked Exhibit A.

8. To the eighth interrogatory he saith: I have never met nor have I ever heard of any other A C A ticking except this Amoskeag A C A ticking; that is, of the A C A ticking.

9. To the ninth interrogatory he saith: I only know one A C A ticking, and that is made by the Amoskeag Manufacturing Company. The firm of which I am a salesman buy the most of their ticking—that is, the A C A tick—in this city, and some of it in New York. I don't know the New York house. In this city they buy of Dodd, Brown & Co., Samuel C. Davis & Co. The others I don't know. Our firm buy this Amoskeag A C A tick in the course of their business.

10. To the 10th interrogatory he saith: I believe this Amoskeag A C A ticking is manufactured by the Amoskeag Manufacturing Company. I know of no other A C A ticking, nor have I ever heard of any other A C A ticking except this Amoskeag A C A.

91 11. To the eleventh interrogatory he saith: I first became acquainted with the Amoskeag A C A about two years ago; I was not employed in that department; I was in the piece goods department; the Amoskeag A C A is the only A C A ticking I ever became acquainted with.

12. To the twelfth interrogatory he saith: The Amoskeag A C A tick has a very good reputation amongst dealers, purchasers, and the public; I don't know but one A C A tick; I don't know whether the Amoskeag A C A has a separate and distinct reputation or not, either purchasers or the public.

13. To the thirteenth interrogatory he saith: I know of but one A C A ticking, and that is the Amoskeag A C A tick; its superiority consists in its being a good feather tick; we have a better ticking in our house, a German tick.

14. To the fourteenth interrogatory he saith: Purchasers never ask me for A C A ticking; they come and ask me for ticking, and I ask them if they want feather tick, and if they do and are Americans I show them the Amoskeag A C A; but if they are Germans I show them the German ticking; but we sell the most of the Amoskeag A C A tick.

15. To the fifteenth interrogatory he saith: I never come in contact with dealers, and therefore I don't know how they designate A C A ticking; I have no knowledge of the matter inquired of in this fifteenth interrogatory, and therefore can't answer.

16. To the sixteenth interrogatory he saith: Purchasers never ask me for any particular grade or make of ticking; they ask for tickings and I ask them if they want feather tick or straw tick; if they say feather tick, and are Americans, I show them the Amoskeag A C A; if they are Germans I show them German tickings, and if they don't wish to go as high as seventy-five cents I show them the Amoskeag A C A.

17. To the seventeenth interrogatory he saith: If I or merchants in this locality should, in ordering tickings from a jobber or wholesale dealer

therein, describe the tickings as A C A ticking, we would intend and understand the Amoskeag A C A made by the Amoskeag Manufacturing Company, and the label would contain those words and letters; the rest I can't say.

18. To the eighteenth interrogatory he : If a consumer desiring to purchase ticking from me, or merchants in this locality, should ask for A C A ticking merely, we would understand him to mean the Amoskeag A C A tick; and don't know what would be the full ticket or label on said ticking; I only know Amoskeag A C A.

19. To the nineteenth interrogatory he saith: I do know and have known for two years A C A ticking as the distinguishing designation of a particular article of ticking in the market, and the Amoskeag A C A ticking is thus designated and has been thus desinated, and is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: In answer to the twentieth interrogatory he saith, I can't answer this question; I have no knowledge of the matter inquired of.

21. To the twenty-first interrogatory he saith: I have been selling A C A tickings for the last two years in St. Louis; in one of the largest, if not the very largest retail stores in the city; I know only one A C A tick, and I know only one label on A C A tick, and I know that label very imperfectly, and this is the Amoskeag A C A ticking; I can't answer this question, as I know nothing of the matter inquired of.

22. To the twenty-second interrogatory he saith; I have seen ticking of the complainants, and thereon the label containing amongst other words
the words and letters Amoskeag Manufacturing Company A C A;
92 I never saw a label containing the words Omega A C A Ring Twist; I don't know about the latter part of this interrogatory; I never heard of the Omega A C A Ring Twist, and therefore I have no knowledge of the matter inquired of in the latter part of this twenty-second interrogatory.

23. To the twenty-third interrogatory he saith: I know nothing further material to the issue in this case, and nothing that can be of any advantage to either party in this suit.

Cross-examination:

X 1. To the first cross-interrogatory he saith: I have been in my present house two years or thereabouts, and I know that I got acquainted with the Amoskeag A C A tick soon after I first went into this house. I never got acquainted with any A C A tick except the Amoskeag A C A. I have no memorandum from which I testify.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company. I am a salesman in the store of Scruggs, Vandervoort & Barney, who buy at wholesale and sell at retail. I got all my information from dealing in tickings, in dealing as salesman in the Amoskeag tickings and other tickings. I have never done any business for the Amoskeag Manufacturing Company.

X 3. To the third cross-interrogatory he saith: I never said that consumers and purchasers would understand anything by particular labels. I expressly said that consumers and purchasers knew nothing about labels and brands.

X 4. To the fourth cross-interrogatory he saith: I never said that the words Amoskeag Manufacturing Company might be confounded with the words Omega Ring Twist. I know nothing about the Omega Ring Twist.

X 5. To the fifth cross-interrogatory he saith: I know nothing further

to the advantage of the defendants or to the disadvantage of the complainants in this case. I know nothing further material to either party.

HENRY MILLER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 10th day of January, 1874, before me,

JOHN D. GREEN,
Commissioner.

STATE OF MISSOURI,
County and City of St. Louis, ss:

I, John D. Green, commissioner appointed according to law, do certify that, in pursuance of the annexed commission, came before me at my office, No. 305½ Olive street, in the city of St. Louis, county of St. Louis, State of Missouri, Jesse Boogher, Joseph Cain, A. Frank, John T. Davis, Cornelius Voorhis, Conrad Ottmer, John Vogel, J. W. Worthington, D. Crawford, John Bohan, Henry Miller, witnesses, whose names had been furnished me by the attorney of the complainants, who were by me severally sworn to testify the whole truth, of their knowledge touching the matters inquired of in the interrogatories and cross-interrogatories hereto annexed; that they were examined according to law, and their examination reduced to writing, and subscribed by them respectively in my presence, on the days (and at my office) mentioned at the foot of each deposition, and their said depositions are now herewith returned.

Given at my office, No. 305½ Olive street, in the city of St. Louis, county of St. Louis, State of Missouri, this 10th day of January, 1874.

[SEAL.] JOHN D. GREEN,
Commissioner.

(Endorsed:) Opened in open court and filed January 19, 1874.

93 *Commission to Quincy, Illinois.*

The execution of this commission appears in certain schedules hereunto annexed.

WILLIAM MARSH,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn and examined on the nineteenth day of January, A. D. 1874, and continued by adjournments from day to day, at the office of William Marsh, in the city of Quincy, in the county of Adams, and State of Illinois, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, William Marsh, directed, for the examination of witnesses in a certain cause depending in said court, wherein the Amoskeag Manufacturing Company are complainants, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

FERDINAND NELKE, of the city of Quincy, county of Adams, and State of Illinois, dry-goods merchant, aged forty-three years and upwards,

being duly sworn and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Ferdinand Nelke.

2. To the second interrogatory he says: I reside at the city of Quincy, Adams County, State of Illinois.

3. To the third interrogatory he says: I have lived there thirteen years.

4. To the fourth interrogatory he says: My business is that of a wholesale and retail dry-goods merchant.

5. To the fifth interrogatory he says: I have been in such business for twenty-one years; I am a member of the firm of Joseph & Nelke; the names of my partners are Wolf Joseph, Martin Joseph and I. D. Nelke.

6. To the sixth interrogatory he says: My firm purchases and sells tickings in the course of our business.

7. To the seventh interrogatory he says: In the course of my business I have become acquainted with a ticking labelled and lettered with a label or ticket, having upon it the letters A C A in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Yds., Manchester, N. H., with ornamental devices surrounding the same, all printed in red ink; and I annex to this, my answer, a specimen of such label or ticket, together with a specimen of the ticking from which such specimen label is taken; such specimen label being pasted upon such specimen ticking, and mark the same Exhibit A.

8. To the eighth interrogatory he says: In the course of my business I have not met nor become acquainted with more than one label, ticket nor card used upon ticking, having thereon the letters A C A, neither alone nor otherwise; I do not remember to have ever seen any A C A ticking except that of the Amoskeag Manufacturing Company.

9. To the ninth interrogatory he says: So far as I have any knowledge, the ticking of which a specimen is annexed to my answer to the seventh interrogatory and marked Exhibit A, was manufactured and originally sold by the Amoskeag Manufacturing Company, and my firm pur-
94 chased the same in the course of our business as merchants from different dealers in New York and elsewhere, but I cannot now give the names of such dealers.

10. To the tenth interrogatory he says: I am acquainted with only one A C A ticking, and I believe that is and has been manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he says: I know but one ticking marked with the letters A C A, and became acquainted with that about twenty years since.

12. To the twelfth interrogatory he says: The tickings having upon them the letters A C A, manufactured by the Amoskeag Manufacturing Company, have a high reputation amongst those who deal in tickings and with the public. I know nothing about any other A C A ticking.

13. To the thirteenth interrogatory he says: I cannot answer this interrogatory, knowing only one A C A ticking.

14. To the fourteenth interrogatory he says: I do not know about other purchasers, but when my firm desires to buy tickings marked with the letters A C A, we ask for or describe them simply as Amoskeag A C A tickings.

15. To the fifteenth interrogatory he says: They describe them as Amoskeag A C A tickings, so far as I know. I never saw any other A C A tickings.

16. To the sixteenth interrogatory he says: Our customers ask for

Amoskeag A C A ticking. I cannot answer further to this interrogatory.

17. To the seventeenth interrogatory he says: The ticking manufactured by the Amoskeag Manufacturing Company would be understood and intended, and the label expected to be found upon it would be the same as the label pasted upon and a part of Exhibit A, annexed to my answer to the seventh interrogatory.

18. To the eighteenth interrogatory he says: We should understand him to mean the ticking manufactured by the Amoskeag Manufacturing Company, and the full label or ticket upon such ticking would be the same referred to in my last answer.

19. To the nineteenth interrogatory he says: I have for twenty years known A C A ticking as the distinguishing designation in the market of a certain article of ticking, and to the extent of my knowledge the ticking so designated has been and is the ticking manufactured by the Amoskeag Manufacturing Company, and bears the label pasted upon Exhibit A, annexed to my answer to the seventh interrogatory.

20. To the twentieth interrogatory he says: Merchants, dealers, purchasers and consumers in my locality have for twenty years been accustomed to designate a particular ticking, and which is manufactured by the Amoskeag Manufacturing Company, as A C A ticking, and I have known no other A C A ticking.

21. To the twenty-first interrogatory he says: I have for twenty years sold tickings marked with the letters A C A, but they have always been tickings manufactured by the Amoskeag Manufacturing Company. I have never seen any A C A label on tickings except the one annexed to Exhibit A, part of my answer to the seventh interrogatory; and I cannot further answer this interrogatory.

22. To the twenty-second interrogatory he says: I have seen ticking marked with the label of the complainant, containing, amongst other things, the words Amoskeag Manufacturing Company, and the letters A C A; but I have never seen a ticket or label upon ticking con-
95 taining the words and letters Omega A C A Ring Twist, and therefore cannot further answer this interrogatory.

23. To the twenty third interrogatory he says: I do not know and cannot set forth any other matter or thing which might be a benefit or advantage to either of the parties in this cause, nor material to the subject-matter of my examination, or the matters in question in this cause.

Cross-examination:

X. To the first cross-interrogatory he says: I have been acquainted with only one ticket containing the letters A C A, as stated in the answers to direct interrogatories, and have made no statement concerning different tickets, and therefore cannot further answer this interrogatory.

X. To the second cross-interrogatory he says: I am not and never have been the agent of the Amoskeag Manufacturing Company, and have never had any connection with that company, nor done any business for them. My information has not been derived from having been engaged as agent nor otherwise for said company, but it has been derived from being engaged in the sale of their tickings purchased by me and my firm from dealers in the market.

X. To the third cross-interrogatory he says: I have been answering as to what I would myself intend and understand, and also what I believe all merchants and dealers would understand.

X. To the fourth cross-interrogatory he says: Not having stated as supposed, I cannot further answer this interrogatory.

X. To the fifth cross-interrogatory he says: I know of nothing to the advantage of the defendants in this case, not mentioned in my answers to the foregoing interrogatories and cross-interrogatories, nor anything to the disadvantage of the complainant.

FERDINAND NELKE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of January, 1874, before me.

WM. MARSH,
Commissioner.

The further taking of these depositions is adjourned until to-morrow, January 20th, 1874, at two o'clock p. m., at the same place.

WM. MARSH,
Commissioner.

1874, January 20th, at two o'clock p. m., the taking of depositions resumed, according to adjournment.

EMANUEL FELSENHELD, of the city of Quincy, county of Adams, and State of Illinois, dry goods merchant, aged twenty-four years and upwards, being duly sworn and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Emanuel Felsenheld.

2. To the second interrogatory he says: I reside in the city of Quincy, Adams County, State of Illinois.

3. To the third interrogatory he says: I have lived there three years.

96 4. To the fourth interrogatory he says: My business is that of a dry goods merchant.

5. To the fifth interrogatory he says: I have been in such business for nine years; I am a member of the firm of M. Felsenheld & Co.; said firm consisting of Morris Felsenheld and myself.

6. To the sixth interrogatory he says: My firm buys and sells tickings in our business.

7. To the seventh interrogatory he says: In the course of my business I have become acquainted with a ticking labelled with a label or ticket having upon it the letters A C A in connection with the words Amoskeag Manufacturing Company, and other words and devices, and I annex to this my answer a specimen of such label or ticket, the same being pasted upon a specimen of the ticking from which the same is taken, and mark the same Exhibit A.

8. To the eighth interrogatory he says: In the course of my business I have not met nor become acquainted with more than one label, ticket nor card used upon tickings, having thereon the letters A C A; I do not remember to have seen any A C A tickings except those of the complainant; think I have seen, in the price lists, other A C A tickings quoted, but never saw the tickings themselves.

9. To the ninth interrogatory he says: So far as I have any knowledge the only A C A tickings with which I am acquainted, and of which said Exhibit A is a specimen, were manufactured and originally sold by the Amoskeag Manufacturing Company, and we have bought them in the Eastern cities from different dealers, but cannot now give their names.

10. To the tenth interrogatory he says: I know no other A C A tickings except those manufactured by the complainants, and cannot further answer this interrogatory.

11. To the eleventh interrogatory he says: I am acquainted with only one ticking marked with the letters A C A, and cannot further answer this interrogatory.

12. To the twelfth interrogatory he says: The tickings having upon them the letters A C A, manufactured by the complainants, have a high reputation with the public and purchasers. I know nothing concerning any other A C A tickings, and cannot further answer this interrogatory.

13. To the thirteenth interrogatory he says: I have no knowledge upon which to base an answer to this interrogatory, except that among dealers the A C A ticking manufactured by the complainants is understood to be the best ticking known.

14. To the fourteenth interrogatory he says: So far as I know, purchasers who desire to buy A C A tickings ask for or describe them indifferently, sometimes as simply A C A tickings, and sometimes Amoskeag A C A tickings; in either case they would mean the A C A tickings manufactured by complainant.

15. To the fifteenth interrogatory he says: Sometimes simply A C A tickings, and sometimes Amoskeag A C A tickings; in either case meaning the same article. I cannot further answer this question.

16. To the sixteenth interrogatory he says: Our customers sometimes ask for Amoskeag A C A ticking, and sometimes simply A C A ticking, and we understand them to mean the same article. I cannot further answer this question.

17. To the seventeenth interrogatory he says: The ticking manufactured by the complainant would be understood and intended, and that the label would be the same as that pasted upon and a part of Exhibit A, annexed to my answer to the seventh interrogatory.

97 18. To the eighteenth interrogatory he says: We should understand him to mean the ticking manufactured by the complainant, and the full label or ticket would be the same as that mentioned in my last answer.

19. To the nineteenth interrogatory he says: I have known A C A ticking as the designation of a certain article of ticking in the market for about nine years, and to the extent of my knowledge, the ticking so designated has been and is that manufactured by the complainant, and labelled as stated in my answer to seventeenth interrogatory.

20. To the twentieth interrogatory he says: They do and have been accustomed for nine years to designate a particular ticking, being that manufactured by complainants, as A C A ticking.

21. To the twenty-first interrogatory he says: I have sold tickings marked with the letters A C A for nine years, but all were manufactured by complainants; I never saw any A C A label other than those upon the tickings manufactured by the complainant, and therefore cannot further answer this question.

22. To the twenty-second interrogatory he says: I have seen tickings marked with the label of complainants containing the words Amoskeag Manufacturing Company, and the letters A C A, but I do not remember to have ever seen a ticket or label upon ticking containing the words and letters Omega A C A Ring Twist, and therefore I cannot further answer this question.

23. To the twenty-third interrogatory he says: I do not know and cannot set forth anything further, nor any other matter or thing which

may be a benefit or advantage to the parties in this suit, or either of them, or that may be material to the subject of my examination or the matters in question in this cause.

Cross-examination:

X 1. To the first-cross-interrogatory he says: I have spoken of but one ticket, and have made no statement in regard to different tickets, and therefore cannot further answer this interrogatory.

X 2. To the second cross-interrogatory he says: I am not the agent and have never had any connection with the Amoskeag Manufacturing Company; my information has not been derived from having been agent, nor otherwise, in the sale of their tickings; I have done no business for said company.

X 3. To the third cross-interrogatory he says: I have been answering as to what I would myself understand and intend, and also as to what I believe all dealers and others would understand and intend, so far as I have any knowledge on the subject inquired about.

X 4. To the fourth cross-interrogatory he says: Having said nothing in regard to confounding the words referred to, I cannot further answer this question,

X 5. To the fifth cross-interrogatory he says: I know nothing to the advantage of the defendants in this case not mentioned in my answers to the above cross-interrogatories and interrogatories on the part of the complainant, nor anything to the disadvantage of the complainant.

E. FELSENHELD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 20th day of January, A. D. 1874, before me.

WM. MARSH,
Commissioner.

98 GEORGE W. WOOD, of the city of Quincy, county of Adams, and State of Illinois, dry goods merchant, aged forty-two years and upwards, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he says: My name is George W. Wood.

2. To the second interrogatory he says: I reside at the city of Quincy, Adams county, Illinois.

3. To the third interrogatory he says: I have lived there two years; previously lived in Chicago six years.

4. To the fourth interrogatory he says: My business is that of a dry goods merchant.

5. To the fifth interrogatory he says: I have been in such business for twenty-five years; I am now a member of the firm of Hill & Wood, which is composed of Fred. T. Hill and myself.

6. To the sixth interrogatory he says: My firm buys and sells tickings in the course of our business.

7. To seventh interrogatory he says: For more than twenty years in my business I have been acquainted with a ticking labelled with a ticket having upon it the letters A C A, in connection with the words Amoskeag Manufacturing Company and other words and devices; and I attach to this my deposition a specimen of such label, which is pasted upon a specimen of the ticking from which the same is taken, and mark the same Exhibit A.

8. To the eighth interrogatory he says: In the course of my business I have seen other A C A tickings, but I have never purchased or dealt

in any A C A tickings except those manufactured by the complainants, and I cannot annex to my deposition any specimen of any other label or ticket.

9. To the ninth interrogatory he says: So far as I have any knowledge, the ticking, of which a specimen is attached to my answer to seventh interrogatory and marked Exhibit A, was manufactured and originally sold by the complainant, and I purchased the same, in the course of my business as a merchant, from dealers in the Eastern cities; never purchased them directly from the manufacturers. I never purchased any other A C A tickings.

10. To the tenth interrogatory he says; I cannot answer this interrogatory, except as to the tickings manufactured by the complainant.

11. To the eleventh interrogatory he says: I became acquainted with the A C A tickings manufactured by complainants more than twenty years ago; cannot answer as to any others.

12. To the twelfth interrogatory he says: The A C A tickings manufactured by the complainants have, as I believe, a better reputation in the market than any other; I cannot answer as to reputation of other tickings.

13. To the thirteenth interrogatory he says: I cannot answer this interrogatory further.

14. To the fourteenth interrogatory he says: So far as I know as simply A C A tickings.

15. To the fifteenth interrogatory he says: Dealers when desiring to purchase A C A tickings manufactured by the complainant, usually describe or designate them simply A C A tickings; I cannot answer this interrogatory further.

16. To the sixteenth interrogatory he says: Consumers some-
99 times designate them as A C A tickings and sometimes Amoskeag A C A tickings, meaning the same article; I cannot answer further.

17. To the seventeenth interrogatory he says: The A C A ticking manufactured by the complainant would be intended and understood, and that the label would be the same as that upon Exhibit A, part of my answer to seventh interrogatory.

18. To the eighteenth interrogatory he says: I should understand him to mean the A C A ticking manufactured by the complainant, and that the label thereon would be the same as that upon Exhibit A, referred to in my last answer.

19. To the nineteenth interrogatory he says: I have for more than twenty years known A C A ticking as the distinguishing designation of a certain article of ticking in the market; and the ticking so designated has been and is the ticking manufactured by the complainant, marked with the letters A C A upon the label.

20. To the twentieth interrogatory he says: They are, and have been for twenty years, accustomed to designate a particular ticking, being the ticking manufactured by the complainant, as A C A ticking.

21. To the twenty-first interrogatory he says: I have sold tickings marked with the letters A C A for twenty-five years, but have sold none except those manufactured by the complainant. I am not acquainted with any other A C A label, and therefore cannot further answer this interrogatory.

22. To the twenty-second interrogatory he says: I have seen, and been familiar for twenty years, with ticking marked with the label of the complainants in this case, containing among other things the words Amoskeag Manufacturing Company and the letters A C A; and I have

seen a label upon ticking containing the words and letters Omega A C A Ring Twist, but I have seen the last mentioned label but a few times, never having dealt in that ticking, and am not sufficiently familiar with it to say whether a purchaser would be likely to confound the two labels; and cannot further answer this interrogatory.

20. To the twenty-third interrogatory he says: I do not know and cannot set forth any other matter or thing which might be a benefit or advantage to the parties in issue in this cause, or either of them, or that might be material to the subject of this examination, or the matters in question in this cause.

Cross-examination:

X 1. To the first cross-interrogatory he says: I have made no statement in regard to different tickets, and cannot further answer this interrogatory.

X 2. To the second cross-interrogatory he says: I am not agent and never have been, and never had any connection with, nor did any business for said company; and my information has not been derived from having been engaged as agent or otherwise in the sale of their tickings.

X 3. To the third cross-interrogatory he says: I have been answering as to what I would myself intend and understand, and also what I believe all dealers and merchants, in the Western States at least, would also intend and understand.

X 4. To the fourth cross-interrogatory he says: I have not stated that the public and purchasers might confound said words, and therefore cannot further answer this interrogatory.

X 5. To the fifth cross-interrogatory he says: I do not know of anything, to the advantage of the defendants in this case, not mentioned in my replies to the above cross-interrogatories and interrogatories on the part of the complainant, nor anything to the disadvantage of the complainant.

100

GEO. W. WOOD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 20th day of January, A. D. 1874, before me.

WM. MARSH,
Commissioner.

The further taking of these depositions is adjourned until to morrow, January 21st, 1874, at two o'clock p. m., at the same place.

WM. MARSH,
Commissioner.

1874, January 21st, at two o'clock p. m., the taking of depositions resumed, according to adjournment.

THOMAS L. FOX, of the city of Quincy, in the county of Adams, and State of Illinois, dry goods merchant, aged forty-four years and upwards, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he says: My name is Thomas L. Fox.

2. To the second interrogatory he says: I reside in the city of Quincy, Adams County, State of Illinois.

3. To the third interrogatory he says: I have lived there eleven years.

4. To the fourth interrogatory he says: My business is that of a dry goods merchant.

5. To the fifth interrogatory he says: I have been in such business for

twenty-three years. I am a member of the firm of T. L. Fox & Co., said firm consisting of myself alone.

6. To the sixth interrogatory he says: We do buy and sell tickings in our business.

7. To the seventh interrogatory he says: I have become acquainted with a ticking labelled with a label or ticket, having upon it the letters A C A in connection with the words Amoskeag Manufacturing Company, and other words and devices, and I annex to this my answer a specimen of such label or ticket, which is pasted upon a specimen of said ticking, and mark the same Exhibit A.

8. To the eighth interrogatory he says: In the course of my business I have not become acquainted with more than one label upon ticking having thereon the letters A C A; have heard of other A C A tickings, but do not remember to have seen any except those manufactured by the complainant; and I cannot annex any specimen of any other label.

9. To the ninth interrogatory he says: I believe the ticking, of which a specimen is annexed to my answer to the seventh interrogatory, marked Exhibit A, was manufactured and originally sold by the complainants; and I purchase them of dealers in the eastern cities in the course of my business. I cannot further answer this question.

10. To the tenth interrogatory he says: The ticking, of which Exhibit A aforesaid is a specimen, I have no doubt was manufactured by the complainant. I can say nothing as to any other tickings.

11. To the eleventh interrogatory he says: I became acquainted with the A C A tickings manufactured by the complainant, more than twenty years since; not acquainted with any other.

101 12. To the twelfth interrogatory he says: The tickings having upon them the letters A C A, manufactured by the complainant, have a high reputation among dealers and with the public; they are understood by dealers to be the best tickings made; I cannot speak as to other A C A tickings, except to say that they are not regarded in the market as equal in quality to the A C A tickings of complainant.

13. To the thirteenth interrogatory he says: I can only say that the reputation of the A C A tickings made by complainant is the best, but cannot state in what the superiority consists.

14. To the fourteenth interrogatory he says: They ask for or describe them simply as A C A tickings.

15. To the fifteenth interrogatory he says: Dealers desiring to purchase the A C A tickings manufactured by the complainant, designate them simply as A C A tickings; I do not know how they would designate any other A C A tickings, as I am not acquainted with any other.

16. To the sixteenth interrogatory he says: Very few consumers know much, if anything, about the different brands or labels upon tickings; but I think those who do know, when they desire the best tickings, ask for or describe them as A C A tickings; I cannot further answer this question.

17. To the seventeenth interrogatory he says: The A C A tickings manufactured by the complainants would be intended and understood, and that the label would be the same as that upon Exhibit A, annexed to my answer to seventh interrogatory.

18. To the eighteenth interrogatory he says: I should understand him to mean the A C A tickings manufactured by complainants, and that the label thereon would be the same as Exhibit A aforesaid.

19. To the nineteenth interrogatory he says: I have for twenty years known A C A ticking as the distinguishing designation of a certain article of ticking in the market; and to the extent of my knowledge the

ticking so designated has been and is the ticking made by the complainant, and marked or labelled with the letters A C A.

20. To the twentieth interrogatory he says: They do and have been accustomed for twenty years to designate a particular ticking, being that manufactured by the complainant, as A C A ticking.

21. To the twenty-first interrogatory he says: I have sold tickings marked with the letters A C A for twenty years; I am not acquainted with any other A C A label except that used upon the tickings made by the complainant, and therefore cannot further answer this interrogatory.

22. To the twenty-second interrogatory he says: I have for twenty years known the tickings marked with the label of the complainants in this case, containing among other things the words Amoskeag Manufacturing Company and the letters A C A; I do not remember that I ever saw any ticking with a label containing the words and letters Omega A C A Ring Twist; and cannot further answer this question.

23. To the twenty-third interrogatory he says: I do not know and cannot set forth any other matter or thing which might be a benefit or advantage to the parties in issue in this cause, or either of them, or that might be material to the subject of this examination, or the matters in question in this cause.

Cross-examination:

1. To the first cross-interrogatory he says: I have made no statement in regard to the order in which I became acquainted
102 with different tickets, as I am acquainted with only one ticket; and cannot further answer this interrogatory.

X 2. To the second cross-interrogatory he says: I am not and never have been agent of said Amoskeag Manufacturing Company; never had any connection with said company, and never did any business for them; and no part of my information has been derived from having been engaged as agent or otherwise in the sale of the tickings of said company.

X 3. To the third cross-interrogatory he says: I have been answering in regard to what I would myself intend and understand, and also what, from my experience, I believe all dealers and merchants would intend and understand.

X 4. To the fourth cross-interrogatory he says: I have not stated that purchasers and the public might confound the said words, and therefore cannot further answer this interrogatory.

X 5. To the fifth cross-interrogatory he says: I do not know of anything to the advantage of defendants in this case, not mentioned in my foregoing replies to the interrogatories and cross-interrogatories, nor anything to the disadvantage of the complainant.

THOMAS L. FOX.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 21st day of January, A. D. 1874, before me.

WM. MARSH,
Commissioner.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, complainant, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, defendants, this piece of ticking and label, marked Exhibit A and to which this paper is attached, were produced and shown to Ferdinand Nelke, Emanuel Fel-

senheld, George W. Wood, and Thomas L. Fox, and by them and each of them deposed unto at the time of the examination.

FERDINAND NELKE.
E. FELSENHELD.
GEO. W. WOOD.
THOS. L. FOX.

WM. MARSH, *Commissioner.*

(Endorsed:) Opened in open court and filed February 6, 1874.

103 *Commission to Davenport, Iowa.*

The execution of this commission appears in certain schedules hereunto annexed.

JOHN N. CRAWFORD.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

EXHIBIT A.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants, this ticking and label was produced and shown to J. H. Meisner, C. S. Streeper, C. S. Whisler, and W. C. Wadsworth, and by each of them deposed unto, at the time of the examination, as Exhibit A.

JOHN N. CRAWFORD.
Commissioner.

CHAS S. STREEPER.
J. H. MEISNER.
W. C. WADSWORTH.
C. S. WHISLER.

EXHIBIT B.

At the execution of a commission for the examination of witnesses between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants, this ticking and label were produced and shown to C. S. Whisler, and by him deposed to, at the time of the examination, as Exhibit B.

JOHN N. CRAWFORD.
Commissioner.

C. S. WHISLER.

Depositions of witnesses produced, sworn, and examined on the nineteenth day of January, in the year of our Lord one thousand eight hundred and seventy four, and continued from day to day by adjournment at the office of John N. Crawford, in the city of Davenport, county of Scott, in the State of Iowa, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, John N. Crawford, directed, for the examination of witnesses in a certain cause depending in said court, wherein the Amoskeag Manufacturing Company are plaintiffs and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

CHAS. S. STREEPER, of the city of Davenport, Iowa, merchant, aged

thirty-five years and upwards, being duly sworn and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: Charles S. Streeper.

2. To the second interrogatory he saith: In the city of Davenport, Iowa.

3. To the third interrogatory he saith: Seventeen years.

4. To the fourth interrogatory he saith: Dry goods.

5. To the fifth interrogatory he saith: Have been in the fancy
104 dry goods business ten years; in the domestic dry goods business six months; have no partners; am in business for myself.

6. To the sixth interrogatory he saith: I have purchased and sold tickings during the last six months.

7. To the seventh interrogatory he saith: I have become acquainted with a ticking labelled with the letters A C A; the specimen hereto annexed marked Exhibit is the kind I refer to.

8. To the eighth interrogatory he saith: I have become acquainted with but one kind of ticking so marked.

9. To the ninth interrogatory he saith: I do not know by what person or firm was manufactured or originally sold; I purchase from Peake, Opdycke & Co., and E. S. Jaffray & Co., of New York City. I purchase the same in the course of my business.

10. To the tenth interrogatory he saith: I don't know anything about it, and have no belief about it.

11. To the eleventh interrogatory he saith: I know of but one ticking marked A C A; became acquainted with it about six months ago.

12. To the twelfth interrogatory he saith: The reputation of tickings marked A C A is good; of the remainder of the interrogatory I have no knowledge of the matter inquired of.

13. To thirteenth interrogatory he saith: I have no knowledge of the matter inquired of.

14. To the fourteenth interrogatory he saith: As A C A tickings is the way they are described.

15. To the fifteenth interrogatory he saith: Dealers describe them as A C A ticking; when they wish to describe the ticking, a specimen of which is annexed to these depositions marked Exhibit A, they describe them as A C A tickings.

16. To the sixteenth interrogatory he saith: I never heard purchasers describe them in any way, except to call for ticking; I have no further knowledge of the matter inquired of.

17. To the seventeenth interrogatory he saith: I know nothing at all as to the manufacturers of these tickings.

18. To the eighteenth interrogatory he saith: I would not know what manufacture of ticking he would mean.

19. To the nineteenth interrogatory he saith: I know there is ticking designated as A C A ticking; what ticking or by whom manufactured I don't know.

20. To the twentieth interrogatory he saith: Merchants and dealers designate a particular kind of ticking as A C A ticking; I have only known about it for the past six months; I don't know of whose manufacture such ticking is.

21. To the twenty-first interrogatory he saith: I have only had six months' experience in selling ticking; as to the remainder of this question, and the matter inquired of, I have no opinion.

22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of complainants containing the words Amoskeag Manufacturing Company and the letters A C A; I have never seen a

ticket or label upon ticking containing the words and letters Omega A C A Ring Twist; I have no opinion as to the matter inquired of in this question.

105 23. To the twenty-third interrogatory he saith: I know nothing more than I have already stated.

X 1. To the first cross-interrogatory he saith: I have not testified as to different tickets. I became acquainted with the ticking testified to when I commenced the business, six months ago. I have not testified from any memorandum.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company. My information is not derived from having been engaged as agent or otherwise in the sale of their tickings. I have done no business for them whatever.

X 3. To the third cross-interrogatory he saith: I have not testified as to what consumers or purchasers intend and understand by particular labels or tickets.

X 4. To the fourth cross-interrogatory he saith: I have not stated that the public and purchasers of tickings would confound the words mentioned.

X 5. To the fifth cross-interrogatory he saith: I know nothing to the advantage of the defendant not already mentioned, nor anything to the disadvantage of the plaintiff.

CHAS. S. STREEPER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of January, 1874, before—

JOHN N. CRAWFORD,
Commissioner.

J. H. MEISNER, of the city of Davenport, merchant by occupation, aged thirty years and upwards, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: J. H. Meisner.

2. To the second interrogatory he saith: In the city of Davenport, State of Iowa.

3. To the third interrogatory he saith: Eighteen years.

4. To the fourth interrogatory he saith: A dealer in dry goods.

5. To the fifth interrogatory he saith: I have been in the business about eighteen years; C. S. Whisler is my partner.

6. To the sixth interrogatory he saith: We sell tickings in our business.

7. To the seventh interrogatory he saith: I have in my business become acquainted with a ticking labelled or lettered A C A, in connection with the name Amoskeag Manufacturing Company. The label and specimen of ticking, marked Exhibit A, hereto annexed, is the kind I have reference to.

8. To the eighth interrogatory he saith: I do not know that I have seen more than one. I have heard there was another out, but I don't know whose it is.

9. To the ninth interrogatory he saith: The specimen annexed marked Exhibit A is manufactured by the Amoskeag Manufacturing Company. We purchase the same from jobbers in the course of our business as merchants.

10. To the tenth interrogatory he saith: I believe that tickings
106 marked A C A are manufactured by the Amoskeag Manufactur-

ing Company, but I have no belief as to whether all such tickings are manufactured by them; I have heard of others.

11. To the eleventh interrogatory he saith: As already stated I have never become acquainted with more than one ticking marked A C A. I first became acquainted with it about fifteen years ago.

12. To the twelfth interrogatory he saith: The reputation of the ticking marked A C A, a specimen of which is attached hereto as Exhibit A, is, that it is one of the best that is manufactured. I know nothing of the reputation of any other ticking marked A C A, either among dealers or purchasers.

13. To the thirteenth interrogatory he saith: I know of but one, as already stated.

14. To the fourteenth interrogatory he saith: Some ask for A C A ticking, and some for Amoskeag A C A ticking.

15. To the fifteenth interrogatory he saith: In ordering A C A ticking I generally name the manufacturer, but sometimes I may not. I do not know how other dealers do. In ordering the ticking, a specimen of which is attached, marked Exhibit A, I generally use the words Amoskeag A C A. Sometimes I may only say A C A ticking.

16. To the sixteenth interrogatory he saith: Consumers generally ask for Amoskeag A C A ticking when purchasing A C A ticking. When intending to purchase ticking, a specimen of which is attached, marked Exhibit A, they ask for Amoskeag A C A ticking, as a general thing. Sometimes they ask for A C A ticking only.

17. To the seventeenth interrogatory he saith: I would expect to get the ticking manufactured by the Amoskeag Manufacturing Company. The label marked Exhibit A on the specimen of ticking hereto attached, is the full label I would expect to find on such ticking.

18. To the eighteenth interrogatory he saith: I would understand him to mean the Amoskeag A C A ticking, a specimen of which is attached to this deposition, marked Exhibit A. The label or ticket would be the same as Exhibit A.

19. To the nineteenth interrogatory he saith: I have known A C A ticking as the distinguishing designation of a certain article of ticking in the market. The ticking manufactured by the Amoskeag Manufacturing Company is so designated, and is the one I have known. I have thus known it for about fifteen years.

20. To the twentieth interrogatory he saith: I cannot say how dealers and merchants, or purchasers and consumers designate particular tickings; cannot say that they designate any particular ticking as A C A ticking.

21. To the twenty-first interrogatory he saith: My experience in selling such ticking covers about fifteen years. I have testified as to but one A C A ticking, and but one label is attached to my answer.

22. To the twenty-second interrogatory he saith: As already testified to, I have seen but one of the labels referred to. I have never seen a label upon ticking containing the words and letters Omega A C A Ring Twist. As to the matter inquired of in the last clause of the question, I have no opinion.

23. To the twenty-third interrogatory he saith: I know nothing further which may be a benefit or advantage to either party in this cause, or that is material to the subject of this examination.

107 *Cross-interrogatories on the part of defendants.*

X 1. To the first cross-interrogatory he saith: I have testified as to

but one ticking; the statements I have made are based on my memory; I have no memorandum or written entries from which I testify.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; I have no arrangements with them for selling their goods; my information is not derived from being engaged as agent or otherwise for them; I have done no business for them.

X 3. To the third cross-interrogatory he saith: I have not testified as to what consumers or purchasers would intend or understand by particular labels on tickings.

X 4. To the fourth cross-interrogatory he saith: I gave no opinion in answer to the twenty-second interrogatory.

X 5. To the fifth cross-interrogatory he saith: I do not know anything to the advantage of defendants, not already mentioned, nor anything to the disadvantage of the plaintiff.

J. H. MEISNER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 19th day of January, 1874, before—

JOHN N. CRAWFORD,
Commissioner.

Adjourned until the 20th of January, 1874.

W. C. WADSWORTH, of the city of Davenport, State of Iowa, aged forty years and upwards, being duly sworn and examined on the part of complainants, doth depose and say as follows:

1. To the first interrogatory he saith: W. C. Wadsworth.

2. To the second interrogatory he saith: In the city of Davenport, Iowa.

3. To the third interrogatory he saith: Eighteen years.

4. To the fourth interrogatory he saith: Dry goods jobber.

5. To the fifth interrogatory he saith: Been in the dry goods business twenty-three years; Wm. Cook and S. S. Hobson are my partners.

6. To the sixth interrogatory he saith: We purchase and sell ticking.

7. To the seventh interrogatory he saith: Have become acquainted with a ticking labelled A C A; the specimen annexed to these depositions marked Exhibit A is a specimen of such ticking and label.

8. To the eighth interrogatory he saith: I am acquainted with the Amoskeag A C A ticking, and have heard of the Omega A C A; think I have seen the latter, but am not positive; have no specimen of any but that which is annexed, marked Exhibit A.

9. To the ninth interrogatory he saith: The specimen I have identified and annexed is manufactured by the Amoskeag Manufacturing Company; we purchase it from New York jobbers; we purchase it in the course of our business as merchants.

108 10. To the tenth interrogatory he saith: The specimen annexed as Exhibit A is the kind manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: Am acquainted with but one.

12. To the twelfth interrogatory he saith: I only know the reputation of the Amoskeag A. C. A., which is high; I know of but one ticking marked A C A in this locality.

13. To the thirteenth interrogatory he saith: I cannot state.

14. To the fourteenth interrogatory he saith: My customers generally ask for A C A ticking simply.

15. To the fifteenth interrogatory he saith: They usually ask for A C A tickings; have not testified to more than one kind.

16. To the sixteenth interrogatory he saith: We don't sell to consumers; don't know how they designate them.

17. To the seventeenth interrogatory he saith: Amoskeag A C A; the label would be the same as shown by Exhibit A.

18. To the eighteenth interrogatory he saith: We do not deal with consumers, and I can't say.

19. To the nineteenth interrogatory he saith: A C A has been the distinguishing designation of the Amoskeag ticking; have known it for fifteen or twenty years; it is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: In this locality they have been in the habit of designating the ticking of the Amoskeag Manufacturing Company as the A C A tick.

21. To the twenty-first interrogatory he saith: My experience extends over fifteen years in selling Amoskeag A C A ticking; not being familiar with the label of any other A C A tick, am not able to say.

22. To the twenty-second interrogatory he saith: That he has no opinion as to the matter inquired of, not being familiar with any other label than the Amoskeag A C A.

23. To the twenty-third interrogatory he saith: I know nothing further of advantage to either party, or material to the case.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: I have testified to but one ticking; have not testified from any written memoranda or entry.

X 2. To the second cross-interrogatory he saith: Am not an agent of the Amoskeag Manufacturing Company; don't know anything about their arrangements for selling goods; my information is not based on having been engaged as agent or otherwise for them.

X 3. To the third cross-interrogatory he saith: No, sir.

X 4. To the fourth cross-interrogatory he saith: Have not testified as to the matter inquired.

X 5. To the fifth cross-interrogatory he saith: I know nothing to the advantage or disadvantage of either.

W. C. WADSWORTH.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 20th day of January, A. D. 1874.

JOHN N. CRAWFORD,
Commissioner.

109 C. S. WHISLER, of the city of Davenport, and State of Iowa, aged fifty years and upwards, being duly sworn and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: C. S. Whisler.

2. To the second interrogatory he saith: In the city of Davenport, Iowa.

3. To the third interrogatory he saith: Twenty-five years.

4. To the fourth interrogatory he saith: Dry goods.

5. To the fifth interrogatory he saith: Twenty-five years; the store to which I give my personal attention I own by myself; I also have a partnership with J. H. Meisner in his store.

6. To the sixth interrogatory he saith: I purchase and sell tickings in my business.

7. To the seventh interrogatory he saith: I have become acquainted

with a ticking labelled A C A, in connection with the words Amoskeag Manufacturing Company; the specimen and card annexed, marked Exhibit A, is what I refer to.

8. To the eighth interrogatory he saith: I have become acquainted with I think two others; one which I call the Pearl River, with the letters A C A on a smaller ticket under the label; also another labelled Morristown Extra Ticking, with the letters A C A on a smaller label under it; I have not got a specimen of the Pearl River brand, but hereto annex a specimen of the Morristown brand, marked Exhibit B.

9. To the ninth interrogatory he saith: Exhibit A is manufactured by the Amoskeag Manufacturing Company; Exhibit B, I don't know by whom it is manufactured; I purchase them both from New York jobbers; I purchase them in the course of my business as a dry goods merchant.

10. To the tenth interrogatory he saith: Exhibit A I believe is manufactured by the Amoskeag Manufacturing Company; I believe Exhibit B is manufactured by some outside parties, but by whom, I can't say.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A first, some twelve years ago; with both the others about two years ago.

12. To the twelfth interrogatory he saith: The reputation of the A C A ticking of the Amoskeag Manufacturing Company is very high; the reputation of the Pearl River A C A is about as good; the Morristown A C A is not as good; they have separate reputations amongst purchasers; the Amoskeag A C A is the highest, the Pearl River the next, and the Morristown the next.

13. To the thirteenth interrogatory he saith: The Amoskeag is the best; its superiority consists in fineness, thickness and good cotton.

14. To the fourteenth interrogatory he saith: They sometimes say A C A ticking simply, and sometimes ask for Amoskeag A C A tickings.

15. To the fifteenth interrogatory he saith: They generally designate the article as A C A ticking; sometimes give the name of the manufacturer; the ticking marked Exhibit A in purchasing might be designated A C A ticking sometimes, and Amoskeag A C A sometimes; the ticking marked Exhibit B would be invariably designated by the name of Morristown.

16. To the sixteenth interrogatory he saith: Sometimes they
110 say Amoskeag A C A ticking, and sometimes A C A ticking; as a general rule the consumers don't know the difference between different kinds of brands, and when they call for A C A ticking they mean the best; the general public or consumers don't know these other brands I have referred to as A C A ticking; when intending to purchase the kind marked Exhibit A, they call it A C A or Amoskeag A C A; when purchasing the other, they purchase it on their own judgment, or upon what we say.

17. To the seventeenth interrogatory he saith: The Amoskeag; the full label would be as shown by Exhibit A.

18. To the eighteenth interrogatory he saith: The Amoskeag; the full label of which is shown by Exhibit A.

19. To the nineteenth interrogatory he saith: I have known A C A ticking as the distinguishing designation of a certain article of ticking for at least ten years; the ticking manufactured by the Amoskeag Manufacturing Company is the kind I refer to.

20. To the twentieth interrogatory he saith: They have been accustomed to designate the ticking manufactured by the Amoskeag Manufacturing Company as A C A ticking merely.

21. To the twenty-first interrogatory he saith: About ten years or more in selling the Amoskeag; about two years selling the others referred; a great many can be led to believe that the ticking with the label of Morristown and the letters A C A was that used upon the other; the same with regard to the Pearl River brand; some people can be led to believe that either one of these is the same as the Amoskeag A C A.

22. To the twenty-second interrogatory he saith: I think I have seen the label and tickings marked Omega A C A Ring Twist; I think I have had them and sold them; in my opinion one-half of the purchasers might be led to believe that the latter ticking was the Amoskeag ticking, or as good, because of the letters A C A on the ticking.

23. To the twenty-third interrogatory he saith: I believe I have stated all that I know of advantage to either party, or material to the issue.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: On my recollection; I have no memorandum.

X 2. To the second cross-interrogatory he saith: No; have no arrangements with them of any kind; no; have done no business for them of any kind.

X 3. To the third cross-interrogatory he saith: It is what I would understand, and what I have no doubt they would intend or understand.

X 4. To the fourth cross-interrogatory he saith: I do not state they would confound those words; they would be misled by the letters A C A; such a thing would occur in this locality, and generally in the West, among general consumers, without respect to their education; I don't know of an instance of the Omega Ring Twist being sold for the other, for I have had but little experience with it; but I have no doubt it could be done, simply from the letters A C A being on it; I know many instances of the Morristown A C A being sold for the Amoskeag.

X 5. To the fifth cross-interrogatory he saith: I know nothing further to the advantage of defendant, or disadvantage of plaintiff.

C. S. WHISLER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 20th day of January, A. D. 1874.

JOHN N. CRAWFORD,
Commissioner.

(Endorsed:) Opened in open court and filed February 6, 1874.

111 *Commission to Chicago, Illinois.*

The execution of this commission appears in certain schedules hereunto annexed.

B. M. WILSON,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn and examined on the 30th day of December, in the year of our Lord one thousand eight hundred and seventy-three, and continued by adjournment from day to day at the office of Benjamin M. Wilson, in the city of Chicago, county of

Cook, and State of Illinois, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, Benjamin M. Wilson, directed, for the examination of witnesses in a certain cause depending in said court, wherein The Amoskeag Manufacturing Company is complainant, and David Trainer, J. Newlin Trainer, William Trainer and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

B. M. WILSON,
Commissioner.

WILLIAM ABNER SIMPSON, of Cambridge, Massachusetts, now temporarily residing in Chicago, in the county of Cook, and State of Illinois, thirty-nine years of age and upwards, a dry goods merchant, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: My name is William Abner Simpson.

2. To the second interrogatory he saith: I am a resident of Cambridge, Massachusetts.

3. To the third interrogatory he saith: Five years.

4. To the fourth interrogatory he saith: I am engaged in the dry goods business, jobbing and retail.

5. To the fifth interrogatory he saith: I have been in the dry goods business altogether twenty years, ten of which on my own account; my partners at present are Harry S. Norwell and Joseph G. Simpson, and we are doing business in Chicago under the firm name of Simpson, Norwell & Co.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: Yes; the ticking manufactured by the Amoskeag Manufacturing Company labelled Amoskeag Manufacturing Company A C A; the ticking and label marked Exhibit A, which I have signed, are the ones.

8. To the eighth interrogatory he saith: Never but the one.

9. To the ninth interrogatory he saith: To the best of my knowledge the Amoskeag Manufacturing Company.

10. To the tenth interrogatory he saith: The Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: I know but the one, and I believe I have known that over ten years.

12. To the twelfth interrogatory he saith: I know but the one, which I consider of superior quality; and it has that reputation.

112 13. To the thirteenth interrogatory he saith: I know but the one.

14. To the fourteenth interrogatory he saith: Purchasers of tickings usually use simply the letters A C A when referring to the goods of which I speak.

15. To the fifteenth interrogatory he saith: I, and I believe dealers generally, usually designate them as A C A goods; I invariably understand the letters A C A to refer alone to the Amoskeag goods.

16. To the sixteenth interrogatory he saith: To the best of my knowledge, usually A C A goods when desiring these Amoskeag goods.

17. To the seventeenth interrogatory he saith: As a rule, orders received for ticking call merely for A C A, which I always understand to refer to the Amoskeag goods, and I believe merchants here generally do.

18. To the eighteenth interrogatory he saith: The Amoskeag; the full label, Amoskeag Manufacturing Company A C A.

19. To the nineteenth interrogatory he saith: For the past ten years I have known the letters A C A in the market to refer to the Amoskeag Manufacturing Company ticking.

20. To the twentieth interrogatory he saith: Merchants and dealers in ticking have been in the habit, ever since my knowledge of ticking, of designating the Amoskeag ticking as A C A.

21. To the twenty-first interrogatory he saith: I have never seen but the one.

22. To the twenty-second interrogatory he saith: I cannot answer; I have seen but the one.

23. To the twenty-third interrogatory he saith: I know of nothing else.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: I know but the one; I have no memorandum.

X 2. To the second cross-interrogatory he saith: No.

X 3. To the third cross-interrogatory he saith: No; but as I consider it generally to be understood.

X 4. To the fourth cross-interrogatory he saith: I know of but the one.

X 5. To the fifth cross-interrogatory he saith: No.

W. A. SIMPSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 30th day of December, 1873, before

B. M. WILSON,
Commissioner.

ROBERT ALLEN BLAIR, of the city of Chicago, in the county of Cook, and State of Illinois, aged thirty-five years and upwards, dry goods merchant, being duly sworn, and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Robert Allen Blair.

2. To the second interrogatory he saith: I am a resident of
113 the city of Chicago, in the county of Cook, and State of Illinois.

3. To the third interrogatory he saith: I have resided in Chicago eleven years.

4. To the fourth interrogatory he saith: I am engaged in the dry goods business.

5. To the fifth interrogatory he saith: I have been engaged in the dry goods business twenty years; I am at present a partner in the firm of A. G. Dows & Co. of this city; my only copartner is Augustus G. Dows.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: The Amoskeag Manufacturing Company's ticking marked Amoskeag Manufacturing Company A C A; I identify the specimen marked Exhibit A, upon which I have placed my signature, as a specimen of this ticking and label.

8. To the eighth interrogatory he saith: I have not met with any other excepting the Amoskeag.

9. To the ninth interrogatory he saith: I have seen none but the Amoskeag, and in regard to it I cannot answer; I have in the course of my business purchased Amoskeag A C A ticking from various parties, but never from the Amoskeag Company.

10. To the tenth interrogatory he saith: I believe the A C A with which I am acquainted to be manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: I became acquainted with the A C A ticking manufactured by the Amoskeag Company at least ten years ago.

12. To the twelfth interrogatory he saith: When our customers purchasing ticking want the best ticking, they ask for the A C A tick; Amoskeag A C A ticking has the reputation among the trade generally of being the best ticking.

13. To the thirteenth interrogatory he saith: I know of no A C A ticking but the Amoskeag.

14. To the fourteenth interrogatory he saith: They ask for A C A ticking simply.

15. To the fifteenth interrogatory he saith: They designate them simply as A C A ticking.

16. To the sixteenth interrogatory he saith: They ask for A C A ticking.

17. To the seventeenth interrogatory he saith: If I, or any dry goods merchant in this locality, ordering ticking from a jobber, should describe the ticking as A C A ticking, we would expect to get the Amoskeag Manufacturing Company's ticking, labelled Amoskeag Manufacturing Company A C A.

18. To the eighteenth interrogatory he saith: I would understand him to mean the Amoskeag Manufacturing Company's A C A ticking, labelled Amoskeag Manufacturing Company A C A.

19. To the nineteenth interrogatory he saith: I have known A C A ticking as the designation distinguishing a certain article of ticking in the market for ten years, manufactured by the Amoskeag Company.

20. To the twentieth interrogatory he saith: They have been accustomed to designate a certain ticking manufactured by the Amoskeag Company as A C A ticking for a long time, I cannot say how long.

114 21. To the twenty-first interrogatory he saith: I cannot answer. I have sold the one A C A label only.

22. To the twenty-second interrogatory he saith: I cannot answer. I have never seen an Omega Ring Twist label.

23. To the twenty-third interrogatory he saith: I do not.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: My memory.

X 2. To the second cross-interrogatory he saith: I have no connection whatever with it.

X 3. To the third cross-interrogatory he saith: From what I intend, and from what other merchants and consumers intend.

X 4. To the fourth cross-interrogatory he saith: I do not know Omega Ring Twist.

X 5. To the fifth cross-interrogatory he saith: I do not.

ROBERT ALLEN BLAIR.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 3d day of January, before

B. M. WILSON,
Commissioner.

JOHN HENRY SNITZLER, of the city of Chicago, in the county of Cook, and State of Illinois, aged thirty-one years and upwards, employé of Richards, Shaw & Winslow, dry goods merchants in the city of Chicago, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: My name is John Henry Snitzler.

2. To the second interrogatory he saith: I am a resident of Chicago, in Cook County, Illinois.

3. To the third interrogatory he saith: Ten years.

4. To the fourth interrogatory he saith: Wholesale dry goods.

5. To the fifth interrogatory he saith: I am employed by Richards, Shaw, & Winslow, wholesale dry goods merchants in this city, as manager of the domestic department and general salesman. I have been in the dry goods business eighteen years.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: I have; a ticking manufactured by the Amoskeag Manufacturing Company, I believe. The label has Amoskeag Manufacturing Company A C A upon it. The sample marked Exhibit A, upon which I have written my name, is this ticking and label.

8. To the eighth interrogatory he saith: I have seen also an Omega ticking marked A C A, but I am not well acquainted with it, and have no specimen.

9. To the ninth interrogatory he saith: The Amoskeag A C A goods which I have bought I purchased from Gardner Brewer & Co., who profess to be the sole agents of the Amoskeag Manufacturing
115 Company. Our firm have not for many years had any but the Amoskeag A C A. I cannot testify as to who originally manufactured and sold the Omega goods. Our firm purchased the Omega goods from William Yelland; the firm purchased all of these tickings in the regular course of business.

10. To the tenth interrogatory he saith: I believe the Amoskeag A C A to be manufactured by the Amoskeag Manufacturing Company. I do not know the name of the firm or corporation manufacturing Omega goods.

11. To the eleventh interrogatory he saith: I first became acquainted with Amoskeag A C A, as nearly as I can recollect, about ten years ago. I cannot recollect the date when I became acquainted with Omega A C A.

12. To the twelfth interrogatory he saith: The only ticking marked A C A with which I am familiar, and the only one which the trade knows anything about as far as my observation goes, is the Amoskeag, that is in this locality; the Amoskeag A C A ticking stands about the highest of any in this market, and for that quality is the most popular ticking in this market.

13. To the thirteenth interrogatory he saith: Not being well acquainted with any but Amoskeag, I cannot answer this question.

14. To the fourteenth interrogatory he saith: Sometimes they describe them as Amoskeag A C A, but more frequently as A C A simply.

15. To the fifteenth interrogatory he saith: In my experience we have never had a call for Omega A C A. Persons who deal in tickings, when they intend to purchase tickings marked with the letters A C A, describe them in almost all instances as A C A ticking, and sometimes as Amoskeag A C A.

16. To the sixteenth interrogatory he saith: I could not answer this question with certainty, as we do not deal with consumers.

17. To the seventeenth interrogatory he saith: The Amoskeag A C A, and I should expect to find the Amoskeag label, Amoskeag Manufacturing Company A C A, upon the goods.

18. To the eighteenth interrogatory he saith: Amoskeag A C A, and the label would be Amoskeag Manufacturing Company A C A.

19. To the nineteenth interrogatory he saith: I have known A C A ticking for about ten years as the distinguishing designation of a certain article of ticking in the market manufactured by the Amoskeag Company.

20. To the twentieth interrogatory he saith: At the present time, and as long as I recollect, merchants, dealers in my locality, designate a particular ticking manufactured by the Amoskeag Manufacturing Company as A C A ticking.

21. To the twenty-first interrogatory he saith: I have sold A C A ticking for about ten years, but to the best of my recollection only Amoskeag.

22. To the twenty-second interrogatory he saith: I do not recollect sufficiently distinctly the Omega label to answer as to whether it could be confounded with the Amoskeag A C A label.

23. To the twenty-third interrogatory he saith: I know of nothing further.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: Only from memory.

116 X 2. To the second cross-interrogatory he saith: I am not and have never been connected with the Amoskeag Manufacturing Company.

X 3. To the third cross-interrogatory he saith: I have been answering with reference to what customers more particularly, and also with reference to what I, myself, would intend.

X 4. To the fourth cross-interrogatory he saith: I cannot answer the question; I do not know the shape even of the Omega Ring Twist A C A label.

X 5. To the fifth cross-interrogatory he saith: I do not know any further matter.

J. H. SNITZLER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 5th day of January, 1874, before

B. M. WILSON,
Commissioner.

HARRY SCLATER NORWELL, of the city of Chicago, in the county of Cook, and State of Illinois, aged forty-one years and upwards, dry goods merchant, being duly sworn, and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Harry Sclater Norwell.

2. To the second interrogatory he saith: Chicago, Cook County, Illinois.

3. To the third interrogatory he saith: Six years last September.

4. To the fourth interrogatory he saith: Dry goods merchant.

5. To the fifth interrogatory he saith: I have been in the dry goods

business about twenty-nine years, nine years on my own account; my partners at present are William A. Simpson and Joseph G. Simpson; our firm is Simpson, Norwell & Co.

6. To the sixth interrogatory he saith: Yes.

7. To the seventh interrogatory he saith: I have in the course of business become acquainted with one ticking labelled A C A, manufactured by the Amoskeag Manufacturing Company of Manchester, New Hampshire; I recognize the specimen marked Exhibit A, to which I have annexed my signature, as that ticking and label.

8. To the eighth interrogatory he saith: No other.

9. To the ninth interrogatory he saith: I know that the Amoskeag Manufacturing Company, of Manchester, originally manufactured and sold the A C A ticking which I have mentioned.

10. To the tenth interrogatory he saith: I believe that the A C A ticking above-mentioned is manufactured by the Amoskeag Manufacturing Company, of Manchester, and sold by Gardner Brewer & Co., of Boston and New York.

11. To the eleventh interrogatory he saith: I first became acquainted with Amoskeag A C A about ten years ago.

12. To the twelfth interrogatory he saith: The A C A ticking of the Amoskeag Manufacturing Company is supposed to be the best ticking in the trade.

13. To the thirteenth interrogatory he saith: I only know one.

117 14. To the fourteenth interrogatory he saith: They ask for A C A ticking simply.

15. To the fifteenth interrogatory he saith: They ask for an A C A ticking.

16. To the sixteenth interrogatory he saith: They ask for A C A ticking.

17. To the seventeenth interrogatory he saith: Amoskeag Manufacturing Company's ticking; I would expect to find Amoskeag Manufacturing Company A C A upon it.

18. To the eighteenth interrogatory he saith: I would understand him to mean the Amoskeag Manufacturing Company's A C A, and labelled Amoskeag Manufacturing Company A C A.

19. To the nineteenth interrogatory he saith: I have known it for the last ten years as the distinguishing designation in the market of the Amoskeag A C A tick.

20. To the twentieth interrogatory he saith: Since I have been in the business in Chicago, over six years, they have been accustomed to designate the Amoskeag Company's A C A ticking as A C A ticking.

21. To the twenty-first interrogatory he saith: I have had experience in selling the A C A of the Amoskeag Company, but no other.

22. To the twenty-second interrogatory he saith: I cannot answer, as I know but the one label.

23. To the twenty-third interrogatory he saith: No; I know of nothing.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: I base my statement about Amoskeag on memory.

X 2. To the second cross-interrogatory he saith: No.

X 3. To the third cross-interrogatory he saith: In testifying as to what consumers and purchasers would intend and understand, I have been answering as to what consumers and purchasers mean when they ask for an A C A tick, and also what I understand myself by an A C A tick.

X 4. To the fourth cross-interrogatory he saith: I know but the one A C A tick.

X 5. To the fifth cross-interrogatory he saith: No.

HARRY S. NORWELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this this 5th day of January, 1874, before

B. M. WILSON,
Commissioner.

CHARLES CROMWELL, of the city of Chicago, in the county of Cook and State of Illinois, aged twenty-four years and upwards, employé of Field, Leiter & Co., dry goods merchants, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: Charles Cromwell.

118 2. To the second interrogatory he saith: I reside in Chicago, Cook County, Illinois.

3. To the third interrogatory he saith: A little over four years.

4. To the fourth interrogatory he saith: Dry goods.

5. To the fifth interrogatory he saith: I have been in the dry goods business about seven years; I am at present with the firm of Field, Leiter & Co., of Chicago, in the capacity of salesman in the domestic department.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: I have in the course of my business met with two tickings labelled with a ticket with the letters A C A upon it; the Amoskeag A C A and the Omega A C A; the Amoskeag ticket contains Amoskeag Manufacturing Company; this is the ticket and goods marked as Exhibit A, upon which I have placed my signature; I have no Omega A C A, and cannot annex the ticket.

8. To the eighth interrogatory he saith: I have met with none except those I have mentioned.

9. The Amoskeag Manufacturing Company manufactured the Amoskeag A C A, and since I have known anything about it, it has been sold by Gardner, Brewer & Co., of New York and Boston; I do not know who originally manufactured the Omega; Field, Leiter & Co. have had none of it since 1871; my firm purchased the Amoskeag A C A in the regular course of business; I cannot state how the Omega A C A was purchased.

10. To the tenth interrogatory he saith: My belief is as I have already stated; I do not know about the Omega.

11. To the eleventh interrogatory he saith: I have known the Amoskeag A C A ever since I have been in the business, since 1867; I became acquainted with the Omega A C A, as far as I have an acquaintance with it, in 1869 or 1870.

12. To the twelfth interrogatory he saith: I can state the reputation among dealers, and with the public and purchasers, of only one ticking marked with the letters A C A, and that is the Amoskeag, which has the best reputation of any ticking of the same grade in the market.

13. To the thirteenth interrogatory he saith: I am well acquainted with but the Amoskeag, and cannot answer.

14. To the fourteenth interrogatory he saith: Sometimes we have orders for A C A simply, sometimes for a particular A C A; only orders for A C A simple and for Amoskeag A C A have come under my personal observation.

15. To the fifteenth interrogatory he saith: My knowledge of tick-

ings marked A C A is confined to Amoskeag; dealers sometimes designate them as A C A simply, and sometimes as Amoskeag A C A.

16. To the sixteenth interrogatory he saith: I am not brought in contact with consumers, and cannot say.

17. To the seventeenth interrogatory he saith: If such a description were used the Amoskeag A C A would be understood, and I would expect to find the goods labelled Amoskeag Manufacturing Company A C A.

18. To the eighteenth interrogatory he saith: I would understand him to mean Amoskeag A C A, labelled as I have stated.

19. To the nineteenth interrogatory he saith: I have, since I have been in Chicago, known A C A ticking as the designation in this market of a certain article of ticking; the Amoskeag A C A is so designated.

119 20. To the twentieth interrogatory he saith: In this locality they designate the Amoskeag Manufacturing Company's A C A, and have since I have been in business here—about four years—as A C A ticking.

21. To the twenty-first interrogatory he saith: I have for a number of years sold Amoskeag A C A ticking; I do not think that I have ever sold any other.

22. To the twenty-second interrogatory he saith: I have no distinct recollection of the Omega A C A ticket, and cannot say.

23. To the twenty-third interrogatory he saith: I do not.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: Upon memory.

X 2. To the second cross-interrogatory he saith: I am not.

X 3. To the third cross-interrogatory he saith: I have been testifying as to what the trade would expect in ordering A C A ticking.

X 4. To the fourth cross-interrogatory he saith: I did not state so.

X 5. To the fifth cross interrogatory he saith: I do not.

CHARLES CROMWELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 6th day of January, 1874, before

B. M. WILSON,
Commissioner.

ROBERT SCOTT, a resident of the city of Chicago, in the county of Cook, and State of Illinois, dry goods merchant, aged thirty-five years and upwards, being duly sworn, and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: Robert Scott.

2. To the second interrogatory he saith: In the city of Chicago, county of Cook, and State of Illinois.

3. To the third interrogatory he saith: About nine years.

4. To the fourth interrogatory he saith: Dry goods merchant.

5. To the fifth interrogatory he saith: Since the spring of 1852; my partners at present are John F. Pirie, George Scott, Andrew McLiesh, doing business under the firms of Carson, Pirie, Scott & Co., and Carson, Pirie & Co.

6. To the sixth interrogatory he saith: Yes.

7. To the seventh interrogatory he saith: Yes; I have become acquainted with a ticking marked with the letters A C A, manufactured by the Amoskeag Manufacturing Company; the device upon the label is, as I recollect, Amoskeag Manufacturing Company A C A, Manches-

ter; I identify the sample marked Exhibit A, upon which I have placed my name, as a specimen of that ticking.

8. To the eighth interrogatory he saith: I do not know; I may have possibly seen an Omega ticking marked A C A; I could not tell what device was on it; I have seen Omega ticks.

9. To the ninth interrogatory he saith: I do not know of my own knowledge who originally manufactured this ticking; Gardner Brewer & Co., of New York, as long as I remember, have been the selling agents.

120 10. To the tenth interrogatory he saith: I believe the Amoskeag A C A ticking to be manufactured by the Amoskeag Manufacturing Company of Manchester, New Hampshire.

11. To the eleventh interrogatory he saith: I only know one tick marked A C A, the Amoskeag; I cannot say I know the Omega, although I may have seen it and may have sold it; I first became acquainted with the Amoskeag a long time ago, I cannot tell how long.

12. To the twelfth interrogatory he saith: I don't know the reputation of any other but the Amoskeag, and it is considered a first class tick by the trade and by the public, so far as I know.

13. To the thirteenth interrogatory he saith: I only know one, the Amoskeag.

14. To the fourteenth interrogatory he saith: Sometimes we get orders for A C A tick alone, and sometimes for Amoskeag A C A tick.

15. To the fifteenth interrogatory he saith: Sometimes as A C A simply, and sometimes as Amoskeag A C A when wishing the Amoskeag Company's A C A ticking.

16. To the sixteenth interrogatory he saith: I cannot say in regard to consumers.

17. To the seventeenth interrogatory he saith: The Amoskeag A C A; the full label would be Amoskeag Manufacturing Company A C A, Manchester, N. H.

18. To the eighteenth interrogatory he saith: Amoskeag A C A, and the full label would be as in my last answer.

19. To the nineteenth interrogatory he saith: I have known it to be the distinguishing mark for a ticking manufactured, to the best of my belief, by the Amoskeag Manufacturing Company for a number of years.

20. To the twentieth interrogatory he saith: The Amoskeag A C A ticking, manufactured by the Amoskeag Manufacturing Company for a long number of years, I cannot say how many.

21. To the twenty-first interrogatory he saith: I have had experience in selling Amoskeag ticking marked A C A, and no other ticking marked A C A, and cannot say.

22. To the twenty-second interrogatory he saith: I don't remember ever seeing any other label marked A C A, and cannot say.

23. To the twenty-third interrogatory he saith: I do not.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: Upon my memory.

X 2. To the second cross interrogatory he saith: No.

X 3. To the third cross-interrogatory he saith: No; what customers intend.

X 4. To the fourth cross-interrogatory he saith: I did not state so.

X 5. To the fifth interrogatory he saith: No; I do not.

ROBERT SCOTT.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 9th day of January, 1874, before

B. M. WILSON,
Commissioner.

121 CHARLES GOSSAGE, a resident of the city of Chicago, in the county of Cook and State of Illinois, a dry-goods merchant, aged forty-four years and upwards, being duly sworn and examined on the part of the complainant, doth depose and say, as follows:

1. To the first interrogatory he saith: Charles Gossage.

2. To the second interrogatory he saith: In Chicago, in the county of Cook and State of Illinois.

3. To the third interrogatory he saith: I have lived here ten years and upwards.

4. To the fourth interrogatory he saith: I am in the dry goods business.

5. To the fifth interrogatory he saith: I have been in the dry goods business thirty years; my only partner is Charles C. Boyles, and we do business under the firm name of Charles Gossage & Co.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: I have become acquainted in the course of my business with a ticking marked with the label A C A, known as the Amoskeag A C A; I identify the sample marked Exhibit A, upon which I have placed my signature, as the Amoskeag A C A tick and label.

8. To the eighth interrogatory he saith: I have become acquainted with no other ticking marked A C A except the Amoskeag, a sample of which I have identified.

9. To the ninth interrogatory he saith: The Amoskeag A C A was originally manufactured by the Amoskeag Company and sold by their agents.

10. To the tenth interrogatory he saith: I believe the Amoskeag A C A to be manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: I have been acquainted with this ticking certainly twelve years, and probably a great deal longer.

12. To the 12th interrogatory he saith: The reputation with the trade and with the public of the Amoskeag A C A is that it is a reliable, well-made article; I know nothing of the reputation of any other ticking marked A C A.

13. To the 13th interrogatory he saith: I know only the Amoskeag A C A.

14. To the fourteenth interrogatory he saith: The dealer in ticking would probably ask only for the A C A tick, and would not consider he was getting the genuine A C A unless manufactured by the Amoskeag Company.

15. To the fifteenth interrogatory he saith: Persons who deal in ticking, when intending to purchase tickings marked A C A, would describe them as A C A ticks.

16. To the sixteenth interrogatory he saith: They would ask simply for an A C A tick.

17. To the seventeenth interrogatory he saith: I—and the custom would be the same with others in this locality—would expect to get the A C A ticking manufactured by the Amoskeag Company, and the full label would be Amoskeag Manufacturing Company A C A.

18. To the 18th interrogatory he saith: I would understand him to

mean the Amoskeag A C A, and the full label would be as in my last answer.

122 19. To the nineteenth interrogatory he saith: I do; for twelve years and upwards the Amoskeag A C A, manufactured by the Amoskeag Company.

20. To the twentieth interrogatory he saith: They do, and have as long as I recollect the brand designated a ticking manufactured by the Amoskeag Company as A C A ticking.

21. To the twenty-first interrogatory he saith: I have been accustomed to sell the Amoskeag ticking marked A C A for twelve years and upwards; I have never sold, to the best of my recollection, any other ticking marked A C A except the Amoskeag.

22. To the twenty-second interrogatory he saith: I may have seen a ticking marked Omega A C A Ring Twist, but do not recollect anything about it.

23. To the twenty-third interrogatory he saith: I do not.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: Upon the best of my recollection; I have no memoranda.

X 2. To the second cross-interrogatory he saith: I am not.

X 3. To the third cross-interrogatory he saith: I have not.

X 4. To the fourth cross-interrogatory he saith: I am not familiar with the Omega Ring Twist label, and do not know anything about it.

X 5. To the fifth cross-interrogatory he saith: I do not.

CHAS. GOSSAGE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 22d day of January, 1874, before

B. M. WILSON,
Commissioner.

DE WITT PAGE BALLARD, of the city of Chicago, county of Cook, and State of Illinois, employé of J. V. Farwell & Co., dry goods merchants in the city of Chicago, aged thirty years and over, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: My name is De Witt Page Ballard.

2. To the second interrogatory he saith: Chicago, Cook County, Illinois.

3. To the third interrogatory he saith: Since 1860.

4. To the 4th interrogatory he saith: Dry goods.

5. To the fifth interrogatory he saith: I have been employed up to January 1st of this year as manager of the domestic stock with J. V. Farwell & Co., of Chicago; since then I have been in charge of the shawl department in the same house; I have been in the dry goods business since 1860.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: Yes; we have had at
123 different times Omega A C A, and always have Amoskeag A C A; I cannot annex a specimen of the Omega; I identify the specimen annexed, marked Exhibit A, as the Amoskeag A C A label and ticking.

8. To the eighth interrogatory he saith: I do not remember having met with any but the Omega and the Amoskeag A C A; I cannot annex a sample of Omega A C A, as I have none.

9. To the ninth interrogatory he saith: We purchase all our tickings in the regular course of our business; I do not of my own knowledge know who originally manufactured and sold either of these goods.

10. To the tenth interrogatory he saith: I cannot say who manufactures the Omega A C A; I believe the Amoskeag to be manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: The Amoskeag A C A I have known for twelve years; the Omega goods I have known of for about two years.

12. To the twelfth interrogatory he saith: The Amoskeag and Omega A C A tickings have separate reputations; the reputation of the Amoskeag A C A is very good; the Omega A C A is not considered so good; merchants generally consider the Amoskeag A C A preferable to the Omega A C A.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A is the better of the two; it is a better weight and better weave, and more free from sizing and of a softer finish.

14. To the fourteenth interrogatory he saith: As a general thing they say Amoskeag A C A, but frequently order A C A ticking; all merchants understand when they order A C A ticks that they want Amoskeag A C A.

15. To the fifteenth interrogatory he saith: If they want Amoskeag A C A ticking they designate it either as Amoskeag A C A, or as A C A ticking, and they mean Amoskeag; if they want Omega they say Omega A C A.

16. To the sixteenth interrogatory he saith: I do not know how consumers would designate them, as I have had no experience with them.

17. To the seventeenth interrogatory he saith: The Amoskeag A C A, and the full label would be that in Exhibit A as annexed.

18. To the eighteenth interrogatory he saith: We would understand him to mean Amoskeag A C A, and the label as in Exhibit A annexed.

19. To the nineteenth interrogatory he saith: I have known A C A ticking as the distinguishing designation of a certain article of ticking in the market, known as Amoskeag A C A, for six years or more, I believe manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: I have known them to designate Amoskeag A C A as A C A ticking for over six years.

21. To the twenty-first interrogatory he saith: I have had a large experience in selling Amoskeag A C A, and a rather limited experience with Omega A C A; the public generally are not misled by the Omega A C A, but new merchants might be led to purchase the Omega A C A for the Amoskeag by salesmen.

22. To the twenty-second interrogatory he saith: I have nothing to say different from my last answer.

23. To the twenty-third interrogatory he saith: No.

124 Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: I have no memorandum or date to cite from; I base it upon my recollection of my experience in buying and selling goods.

X 2. To the second cross-interrogatory he saith: I am not.

X 3. To the third cross-interrogatory he saith: I have been answering from my personal experience in selling the goods.

X 4. To the fourth cross-interrogatory he saith: I do not know that I can cite any particular instance of confounding the brands. If there are such mistakes, they are likely to occur among inexperienced merchants.

X 5. To the fifth cross interrogatory he saith: I do not know of anything that could be of advantage to either party except what I have mentioned.

DE WITT PAGE BALLARD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 24th day of January, 1874, before

B. M. WILSON,
Commissioner.

MARSHALL FIELD, of the city of Chicago, in the county of Cook and State of Illinois, dry-goods merchant, aged thirty-eight years and upwards, being duly sworn and examined on the part of the complainant, doth depose and say as follows:

1. To the first interrogatory he saith: Marshall Field.
2. To the second interogatory he saith: Chicago.
3. To the third interrogatory he saith: Eighteen years.
4. To the fourth interrogatory he saith: Dry goods.
5. To the fifth interrogatory he saith: Twenty-two years. I am at present senior member of the firm of Field, Leiter & Co., of this city. My partners are L. G. Leiter, J. N. Field, L. G. Woodhouse, H. J. Willing, and Henry Field.
6. To the sixth interrogatory he saith: Yes; we do.
7. To the seventh interrogatory he saith: I have become acquainted with the Amoskeag Manufacturing Company's A C A; label is Amoskeag Manufacturing Company A C A. I identify the specimen marked Exhibit A, on which I have placed my name, as Amoskeag A C A ticking.
8. To the 8th interrogatory he saith: I think I have seen Omega A C A; I can annex no sample.
9. To the ninth interrogatory he saith: Amoskeag Manufacturing Company; I do not know in regard to Omega; I have purchased Amoskeag from Gardner Brewer & Co. in the regular course of business.
10. To the tenth interrogatory he saith: The Amoskeag Manufacturing Company manufactures the Amoskeag A C A.
11. To the eleventh interrogatory he saith: I have known Amoskeag a long number of years; I cannot say how many.
12. To the twelfth interrogatory he saith: The Amoskeag A C A has a good reputation. I cannot answer further.
13. To the thirteenth interrogatory he saith: I cannot answer.
14. To the fourteenth interrogatory he saith: Usually in ordering Amoskeag A C A our customers order simply A C A; I do not know in regard to other tickings.

125 15. To the fifteenth interrogatory he saith: As A C A ticking in the case of the Amoskeag; further I do not know.

16. To the sixteenth interrogatory he saith: I cannot answer.
17. To the seventeenth interrogatory he saith: Amoskeag; the label would be Amoskeag Manufacturing Company A C A.
18. To the eighteenth interrogatory he saith: Amoskeag; labelled Amoskeag Manufacturing Company A C A.
19. To the nineteenth interrogatory he saith: Amoskeag, manufactured by Amoskeag Company for many years.
20. To the twentieth interrogatory he saith: I think for many years; the Amoskeag Manufacturing Company's ticking.
21. To the twenty-first interrogatory he saith: My firm have dealt

very largely in the Amoskeag ticking, the A C A. I cannot further answer the question.

22. To the twenty-second interrogatory he saith: I cannot answer.

23. To the twenty-third interrogatory he saith: I cannot.

Cross-interrogatories:

X 1. To the first cross-interrogatory he saith: My best recollection.

X 2. To the second cross-interrogatory he saith: No.

X 3. To the third cross interrogatory he saith: I state what most customers order.

X 4. To the fourth cross-interrogatory he saith: I did not so state.

X 5. To the fifth cross-interrogatory he saith: I do not.

MARSHALL FIELD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 3d day of February, 1874, before

B. M. WILSON,
Commissioner.

EXHIBIT A.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, complainant, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, defendants, this ticking and label was produced and shown to Robert A. Blair, Henry Snitzler, William A. Simpson, Harry S. Norwell, Charles Cromwell, De Witt Page Ballard, Charles Gossage, Robert Scott, and Marshall Field, and by them deposed unto at the time of the examination.

W. A. SIMPSON.
ROBERT ALLEN BLAIR.
HARRY S. NORWELL.
J. H. SNITZLER.
CHARLES CROMWELL.
ROBERT SCOTT.
CHAS. GOSSAGE.
DE WITT PAGE BALLARD.
MARSHALL FIELD.

B. M. WILSON,
Commissioner.

(Endorsed:) Opened in open court and filed February 9, 1874.

126 *Commission to Toledo, Ohio.*

The execution of this commission appears in certain schedules hereunto annexed.

RICHARD WAITE,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn and examined on the thirty-first day of January, A. D. 1874, and continued by adjournments from day to day, at the office of Richard Waite, in the city of Toledo, county of Lucas, and State of Ohio, under and by virtue of a commission issued out of the circuit court of the United States, in and for the east-

ern district of Pennsylvania, to me, Richard Waite, directed, for the examination of witnesses in a certain cause depending in said court, wherein The Amoskeag Manufacturing Company are plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

JOHN A. MOORE, of Maumee City, Lucas County, Ohio, a merchant, aged fifty-seven years and upwards, being duly sworn, and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is John A. Moore.

2. To the second interrogatory he saith: I reside at Maumee City, Lucas County, Ohio; but I do business at the city of Toledo, in said county.

3. To the third interrogatory he saith: I have resided in Maumee City for thirty-seven years, and been engaged in business at Toledo for sixteen years last past.

4. To the fourth interrogatory he saith: My business is that of a dry goods merchant.

5. To the fifth interrogatory he saith: I have been dealing in dry goods for thirty-seven years; my present partner is my brother, Albert C. Moore; am not in the employ of any one.

6. To the sixth interrogatory he saith: We do sell tickings in the course of our business.

7. To the seventh interrogatory he saith: We have in the course of our business become acquainted with a ticking labelled with a label having upon it the letters A C A, in connection with other words, as follows: Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Yds., A C A, Manchester, N. H.; and I annex hereto a specimen of such label, and also a specimen of the ticking to which such label is attached.

8. To the eighth interrogatory he saith: I have never met in the course of our business any other label, ticket or card having upon it the letters A C A, other than the label referred to in my answer to the seventh interrogatory.

9. To the ninth interrogatory he saith: I have no positive knowledge as to who manufactured this ticking, but have every reason to suppose it was manufactured and originally sold by the Amoskeag Manufacturing Company; this specimen was purchased by us from Peake, Opdycke & Co., of New York City, and was purchased by my firm in the course of our business as merchants.

127 10. To the tenth interrogatory he saith: I know of no one manufacturing ticking marked with the letters A C A except the Amoskeag Manufacturing Company, and believe this ticking to have been manufactured by them.

11. To the eleventh interrogatory he saith: I have only known but the one ticking thus designated, and should think I have known this brand for twenty years or more.

12. To the twelfth interrogatory he saith: The ticking which has upon it the label such as I have hereto annexed, has had the reputation of being a superior quality of ticking among all parties, both merchants and consumers; as I know of but this one brand, I cannot answer as to others.

13. To the thirteenth interrogatory he saith: Being unacquainted with other ticking designated in any manner by the letters A C A, I am unable to answer this interrogatory.

14. To the fourteenth interrogatory he saith: A purchaser wishing to

buy ticking labelled with such a label as I have annexed, would designate it simply as A C A ticking; no manufacturer's name would ordinarily be given.

15. To the fifteenth interrogatory he saith: They designate it simply as A C A ticking, meaning thereby this particular brand or manufacture of ticking.

16. To the sixteenth interrogatory he saith: Those who wish to buy ticking like the specimen which I have annexed hereto, and who know it by the label, would designate it simply as A C A ticking, and usually would not refer to it as that manufactured by any particular company.

17. To the seventeenth interrogatory he saith: If I should send an order to a jobber or wholesale dealer for A C A ticking, I should expect that manufactured by the Amoskeag Manufacturing Company, and none other; and I should expect on the ticking a label like the one I have before described and annexed hereto.

18. To the eighteenth interrogatory he saith: I should understand him to mean that manufactured by the Amoskeag Manufacturing Company, and to have upon it the same label which I have before described and annexed a specimen hereto.

19. To the nineteenth interrogatory he saith: I have known this for twenty years and upwards; and have known it as a brand of ticking manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants, and dealers, and purchasers, and consumers of ticking in this locality have been accustomed, for at least twenty years, to designate a particular ticking as A C A ticking; and mean thereby a brand of ticking manufactured by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: I have sold ticking thus designated and marked for twenty years and more; those persons not familiar with the custom of manufacturers in labelling or branding their goods, might confound ticking manufactured by other companies, and branded or labelled with the letters A C A, with that manufactured by the Amoskeag Manufacturing Company.

22. To the twenty-second interrogatory he saith: I have already stated that I have seen ticking manufactured by the Amoskeag Manufacturing Company, and labelled in the manner referred to in the interrogatory; and that I have never seen ticking with the letters A C A thereon in any other manner, and consequently I cannot answer the remainder of this interrogatory.

128 23. In answer to the twenty-third interrogatory he saith: I do not think of any other matter or fact material which I can add to what I have already stated.

X 1. To the first cross interrogatory he saith; As I have known but this one brand of A C A ticking, I have no answer to make to this interrogatory.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company and never have been, and have no arrangements for selling their goods or tickets.

X 3. To the third cross-interrogatory he saith: This brand of ticking manufactured by the Amoskeag Manufacturing Company has been so long known to the trade and favorably, that my answers have been based upon a long experience in buying and selling dry goods.

X 4. To the fourth cross-interrogatory he saith: As I have never seen any ticking labelled with Omega A C A Ring Twist, I have no answer to make to this interrogatory.

X 5. To the fifth cross-interrogatory he saith: I know of nothing I can add hereto of advantage or disadvantage to either party.

JOHN A. MOORE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 31st day of January, A. D. 1874.

RICH'D WAITE,
Commissioner.

Also, CHARLES L. LUCE, of Toledo, Lucas County, Ohio, a merchant, aged forty-seven years and upwards, being duly sworn, and examined ons the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Charles L. Luce.

2. To the second interrogatory he saith: I reside in Toledo, Lucas County, Ohio.

3. To the third interrogatory he saith: I have lived here about eight and one-half years.

4. To the fourth interrogatory he saith: My business is jobbing dry goods.

5. To the fifth interrogatory he saith: I have been in such business eight and a half years, but have been in the dry goods business for twenty-six years; my present partners are F. C. Chapin and James Blass; I am not employed in any capacity.

6. To the sixth interrogatory he saith: We do.

7. To the seventh interrogatory he saith: We have never dealt in any other ticking than that manufactured by the Amoskeag Manufacturing Company which has upon it in any manner the letters A C A; but I have seen other ticking than that manufactured by the Amoskeag Manufacturing Company which had these letters upon a label attached to the ticking; I annex hereto a specimen of the label used by the Amoskeag Manufacturing Company, which will show of itself what other words and devices are connected with the letters A C A; this is the only label upon any ticking I have ever had upon which these
129 letters appear; I cannot annex any other specimen of label; I also annex a specimen of the ticking upon which the label annexed is usually attached.

8. To the eighth interrogatory he saith: I have met in the course of my business other labels upon ticking, having on such labels the letters A C A, as for instance ticking known as the Omega ticking; but I am unable to annex a specimen or give a particular description of it, nor can I annex a specimen of the ticking to which such label is usually attached.

9. To the ninth interrogatory he saith: The ticking of which I annex a specimen I suppose and believe to have been manufactured by the Amoskeag Manufacturing Company; our last purchase was made from Griswold, Whitman & Welsh, of New York City; this specimen was not itself purchased by us, but is precisely the same as some we have in our store purchased as above in the regular course of our business.

10. To the tenth interrogatory he saith: I have no definite knowledge, but believe it to have been manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: I first knew the Amoskeag A C A as long ago as 1850; and do not regard myself as really having become acquainted with any other ticking marked with these letters and it is only recently that I have seen any other so labelled.

12. To the twelfth interrogatory he saith: I do not consider any other

ticking to have established a reputation on the quality mark A C A, except that manufactured by the Amoskeag Manufacturing Company; this designation A C A is a quality designation; whenever I have seen ticking made by other parties marked or labelled with the letters A C A, I supposed it was done for the purpose of selling these goods upon the reputation acquired by the Amoskeag Manufacturing Company for the sale of their ticking marked with these letters.

13. To the thirteenth interrogatory he saith: All I can say is that the Amoskeag A C A ticking is regarded generally as the best ticking made.

14. To the fourteenth interrogatory he saith: They ask for them both ways; but when they ask for A C A ticking merely, we suppose they mean that manufactured by the Amoskeag Manufacturing Company, as much as if they had mentioned also that company.

15. To the fifteenth interrogatory he saith: They would be as apt to describe or designate it merely as A C A ticking as in any other way; not having dealt in other ticking similarly labelled, I cannot state how such others would be designated.

16. To the sixteenth interrogatory he saith: Consumers would designate it as A C A ticking oftener than in any other way; as to other kinds than the specimen I have annexed, I do not know.

17. To the seventeenth interrogatory he saith: We would mean that manufactured by the Amoskeag Manufacturing Company, and we should expect to find a label upon the ticking the same as the one I have annexed.

18. To the eighteenth interrogatory he saith: If a customer should come to our store and ask for A C A ticking merely, we should suppose he meant that manufactured by the Amoskeag Manufacturing Company, and the label upon such ticking would be like the one I have annexed.

19. To the nineteenth interrogatory he saith: I have known A C A ticking as a distinguishing designation of a certain article of ticking in the market ever since 1850; and the ticking thus designated is that manufactured by the Amoskeag Manufacturing Company.

130 20. To the twentieth interrogatory he saith: Merchants and dealers in ticking do generally designate a certain grade of ticking manufactured by the Amoskeag Manufacturing Company as A C A ticking generally; and ticking manufactured by any other company is not so designated, to my knowledge.

21. To the twenty-first interrogatory he saith: I have sold A C A ticking, more or less, ever since 1850; the letters A C A being the prominent quality mark, or means by which such ticking is designated, purchasers would be very liable to be deceived into purchasing ticking manufactured by other parties and labelled as A C A, when they supposed they were buying that manufactured by the Amoskeag Manufacturing Company, even though the manufacturers' names should appear upon the label with these letters.

22. To the twenty-second interrogatory he saith: I have seen both of the labels referred to in this interrogatory, and in my opinion, very many persons would be liable to confound the two, and mistake the Omega for the Amoskeag A C A.

23. To the twenty-third interrogatory he saith: It seems to me the whole ground has been covered, and that I cannot add anything more.

X 1. To the first cross-interrogatory he saith: I base my statement upon my memory; I have no memorandum or written entry

X 2. To the second cross-interrogatory he saith: I am not, nor is my

firm, an agent of the Amoskeag Manufacturing Company, and never have been; we have no arrangement for the sale of their goods, only as we buy them; the information which I possess is derived from buying and selling these goods in the ordinary way; we have done no business for them.

X 3. To the third cross-interrogatory he saith: My testimony upon this point is based upon a long intercourse with dealers and consumers of ticking.

X 4. To the fourth cross-interrogatory he saith: This mistake would be likely to occur in places, and among persons who had a limited experience in the buying or selling of tickings, and among parties not familiar with the particular method manufacturers have in designating their different grade of goods; I have never known any such mistake to have been committed.

X 5. To the fifth cross-interrogatory he saith: I know of nothing more which seems to me would be of any advantage or disadvantage to either party.

CHARLES L. LUCE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 2d day of February, A. D. 1874.

RICH'D WAITE,
Commissioner.

Also, FRANK HILLENKAMP, of Toledo, Lucas County, Ohio, a clerk, aged twenty-four years and upwards, being duly sworn, and examined on the part of the plaintiffs, doth depose and say:

1. To the first interrogatory he saith: My name is Frank Hillenkamp.

2. To the second interrogatory he saith: I reside in Toledo, Lucas County, Ohio.

3. To the third interrogatory he saith: I have lived in Toledo two years and seven months.

131 4. To the fourth interrogatory he saith: I am a clerk in the dry goods business.

5. To the fifth interrogatory he saith: I have never been in business for myself, and have never had any partner; at the present time I am in the employ of A. M. Graff & Phillips, dry-goods merchants, at Toledo, Ohio, as salesman for them; I have been clerk in the dry-goods business for over eight years.

6. To the sixth interrogatory he saith: The firm by whom I am employed do purchase and sell tickings in the course of their business.

7. To the seventh interrogatory he saith: I have, in the course of my employment, become acquainted with a ticking labelled with a label having upon it the following words: Amoskeag Manufacturing Company, A. D. 1836, Power Loom, Yds., A C A, Manchester, N. H.; I have seen but one kind of ticking in any manner marked with these letters, A C A; I annex hereto a specimen of the label referred to, and also a specimen of the ticking to which such label is attached.

8. To the eighth interrogatory he saith: I have never seen or become acquainted with but the one kind of ticking in any manner labelled or marked with these letters, and a specimen of both this label and ticking I have annexed as stated in my answer to the seventh interrogatory.

9. To the ninth interrogatory he saith: I believe that the specimen of ticking which I have annexed was manufactured and originally sold by the Amoskeag Manufacturing Company, but of course I have no per-

sonal knowledge as to this; the specimen was purchased by my employers from H. B. Claflin & Co., New York City, in the course of their business.

10. To the tenth interrogatory he saith: It is my belief that the specimen of ticking which I have annexed hereto was manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: I first became acquainted with this ticking of which I have annexed a specimen, and also of the label attached thereto, about two years ago.

12. To the twelfth interrogatory he saith: The reputation of the ticking labelled with the label of which I have annexed a specimen is, that it is considered the best manufactured; as I annex but the one specimen, I cannot answer the balance of the interrogatory.

13. To the thirteenth interrogatory he saith: I can give no answer to this interrogatory, as I have known of but one quality of ticking marked or labelled as referred to.

14. To the fourteenth interrogatory he saith: Purchasers who wish to buy ticking marked with the letters A C A, ask for and describe it as A C A ticking simply; no particular manufacture, grade, or quality of goods *in* mentioned.

15. To the fifteenth interrogatory he saith: The ticking labelled with the label of which I have annexed a specimen, is described and designated by persons who deal in ticking as A C A ticking merely; I am unable to answer as to other kinds of tickings.

16. To the sixteenth interrogatory he saith: Consumers would describe this ticking as A C A ticking, unless the party was himself aware that other ticking was also marked with these letters, then he would designate the kind, of which I have annexed a specimen, as Amoskeag A C A ticking; how other kinds are designated, I cannot tell.

17. To the seventeenth interrogatory he saith: If I was order-
132 ing ticking from a jobber or wholesale dealer in the manner stated in this interrogatory, I should expect to receive that manufactured by the Amoskeag Manufacturing Company, and to find upon it a label like the specimen I have annexed, and such I think would be the case with other merchants in this locality.

18. To the eighteenth interrogatory he saith: I should unhesitatingly understand him to mean the ticking manufactured by the Amoskeag Manufacturing Company, which has upon it the label same as the one of which I have annexed a specimen.

19. To the nineteenth interrogatory he saith: I have for about two years known A C A ticking as the distinguishing designation of that kind of ticking which has upon it the label such as I have annexed a specimen, and which I suppose to be manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: So far as my experience goes, all parties who have anything to do with ticking are accustomed to designate this grade of ticking, having upon it this kind of label, as A C A ticking.

21. To the twenty-first interrogatory he saith: I have sold ticking thus marked almost daily for the last two years; but as I have never seen any marked A C A in any other manner than by the label like the one I have annexed, I cannot answer the rest of the interrogatory.

22. To the twenty-second interrogatory he saith: I have seen as I have before stated, ticking labelled with a label containing the words Amoskeag Manufacturing Company and the letters A C A; but I have

not seen any marked or labelled with the letters A C A in any other manner.

23. To the twenty-third interrogatory he saith: I do not know of anything more which I can add hereto of advantage to either party, or material to the issue.

X 1. To the first cross-interrogatory he saith: As I have known but the one kind of ticket, I have no answer to make to this interrogatory.

X 2. To the second cross-interrogatory he saith: I never was the agent of this company, and never had any arrangement for the sale of their goods; nor have I had anything to do as agent or otherwise in the sale of their tickets.

X 3. To the third cross-interrogatory he saith: My statements as to what others would intend and understand by this label has been based upon my experience in dealing with others.

X 4. To the fourth cross-interrogatory he saith: As I did not answer this interrogatory in the manner referred to, I have no answer to make to the present interrogatory.

X 5. To the fifth cross-interrogatory he saith: I know of nothing further to be said in this matter.

FRANK HILLENKAMP.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 3d day of February, A. D. 1874.

RICH'D WAITE,
Commissioner.

Also, HERMAN H. SCHULTE, of Toledo, Lucas County, Ohio, a merchant, aged twenty-seven years, being duly sworn, and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Herman H. Schulte.

133 2. To the second interrogatory he saith: I reside in Toledo, Lucas County, Ohio.

3. To the third interrogatory he saith: I have lived here for four years last past.

4. To the fourth interrogatory he saith: I am a general dry goods merchant.

5. To the fifth interrogatory he saith: I have been in such business for over six years; I have now no partner.

6. To the sixth interrogatory he saith: I do sell ticking in the course of my business.

7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with a ticking labelled with a label which has upon it the letters A C A, and I annex hereto a specimen of such label, which will show what other words and devices are connected with these letters; I also annex a specimen of the ticking to which such label is attached.

8. To the eighth interrogatory he saith: I have in the course of my business become acquainted with only this one label used upon ticking, which has upon it these letters A C A; and only this one kind of ticking which is in any manner marked or labelled with these letters.

9. To the ninth interrogatory he saith: I have no personal knowledge by whom this specimen ticking which I annex was manufactured; it was bought by me from Mitchell, Green & Stevens, of Boston, Mass.

10. To the tenth interrogatory he saith: My belief is that this specimen of ticking which I annex was manufactured by the Amoskeag Man-

ufacturing Company, the plaintiff in this suit, and that all the ticking labelled with the label like the one I have annexed is manufactured by this company.

11. To the eleventh interrogatory he saith: I have known this kind of ticking thus labelled for about six years.

12. To the twelfth interrogatory he saith: The ticking like the specimen I annexed, and labelled with this label, has the reputation of being the best manufactured.

13. To the thirteenth interrogatory he saith: I cannot answer this interrogatory, as I annex but one specimen.

14. To the fourteenth interrogatory he saith: Purchasers as a general thing ask for this particular kind of ticking as A C A ticking simply.

15. To the fifteenth interrogatory he saith: My knowledge extends only to this ticking manufactured by the Amoskeag Manufacturing Company, and whenever that quality is desired, persons dealing in it almost generally designate it as A C A ticking simply.

16. To the sixteenth interrogatory he saith: Consumers desiring to purchase a kind of ticking like that of which I have annexed a specimen, and labelled in the same manner, describe and designate it simply as A C A ticking.

17. To the seventeenth interrogatory he saith: We should expect that manufactured by the Amoskeag Manufacturing Company, and should expect to find upon it a label like the one I have annexed.

18. To the eighteenth interrogatory he saith: It is not unfrequent that consumers come into my store and ask for some A C A ticking, and we understand them to mean that manufactured by the Amoskeag Manufacturing Company, which has upon it a label like the one I have hereto annexed.

134 19. To the ninth interrogatory he saith: Ever since I have known ticking labelled with this label, of which I annex a specimen, I have known it by the distinguishing designation of A C A ticking; and to the extent of my knowledge it has always been so designated, and is the only kind or quality of ticking so designated.

20. To the twentieth interrogatory he saith: The parties referred to in this interrogatory have, during the time I have dealt in ticking, been accustomed to designate the ticking labelled with the label, of which I have annexed a specimen, as A C A ticking.

21. To the twenty-first interrogatory he saith: I have always had, ever since I have been in business, ticking marked with the letters A C A in the manner I have before stated as a part of my stock, and sell more of it than any other kind or quality; but as I have annexed but one specimen of label, I cannot answer the remainder of the interrogatory.

22. To the twenty-second interrogatory he saith: I have seen no ticking marked or labelled with the words and letters Omega A C A Ring Twist; I have seen the letters A C A upon ticking only in the manner as heretofore stated, consequently I cannot further answer this interrogatory.

23. To the twenty-third interrogatory he saith: I know of nothing further which I can say in answer to this interrogatory.

X 1. To the first cross-interrogatory he saith: I know when I first became acquainted with this ticket only from memory.

X 2. To the second cross-interrogatory he saith: I never was the agent for, and never had any arrangement with the Amoskeag Manufacturing Company for the sale of their goods or tickets.

X 3. To the third cross-interrogatory he saith: I have not.

X 4. To the fourth cross-interrogatory he saith: As I did not answer the twenty-second interrogatory in manner stated, I have no answer to make to this interrogatory.

X 5. To the fifth cross-interrogatory he saith: I do not.

H. H. SCHULTE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 4th day of February, A. D. 1874.

RICH'D WAITE,
Commissioner.

Also, DUDLEY M. KEEN, of Toledo, Ohio, a merchant, aged thirty-seven years, being duly sworn, and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Dudley M. Keen.
2. To the second interrogatory he saith: I reside in Toledo, Ohio.
3. To the third interrogatory he saith: I have lived here four years.
4. To the fourth interrogatory he saith: I am a wholesale dry goods merchant.
5. To the fifth interrogatory he saith: I have been in the dry
135 goods business for fifteen years; my present partners are C. H. Applegate, Daniel S. Applegate, and Frank T. Lane, under the firm-name of Applegate, Keen & Co.
6. To the sixth interrogatory he saith: We do.
7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with ticking labelled with a label having upon it the letters A C A in connection with other words and devices; I annex hereto a specimen of such label, which will show what other words and devices are used in connection with these letters; I also annex a specimen of the ticking requested.
8. To the eighth interrogatory he saith: I have never seen but this one kind of label or ticket used upon ticking which has upon it these letters; nor have I seen ticking marked with these letters in any other manner.
9. To the ninth interrogatory he saith: I do not know of my own knowledge by whom this ticking, of which I have annexed a specimen, was manufactured; it was, however, purchased by my firm from Gardner, Brewer & Co., of New York City, in the course of our regular business.
10. To the tenth interrogatory he saith: My belief is, this ticking, of which I have annexed a specimen, was manufactured by the Amoskeag Manufacturing Company, the complainants in this case.
11. To the eleventh interrogatory he saith: I first became acquainted with this kind of ticking, labelled with the label of which I have annexed a specimen, when I first went into business, some fifteen years ago.
12. To the twelfth interrogatory he saith: The ticking of which I have annexed a specimen, and which is marked with the letters A C A, is considered a standard ticking of superior quality; how it may compare with other ticking marked similarly, or otherwise with these same letters, but manufactured by other parties, I do not know.
13. To the thirteenth interrogatory he saith: As I annex but one specimen, I cannot answer this interrogatory.
14. To the fourteenth interrogatory he saith: Generally, they would describe the ticking, of which I have annexed a specimen, as Amoskeag A C A ticking; sometimes it is designated as A C A ticking simply.

15. To the fifteenth interrogatory he saith: Generally, as Amoskeag A C A ticking, but sometimes as A C A ticking simply; that is, if they wish to buy that quality of ticking manufactured by the Amoskeag Manufacturing Company, labelled with the label of which I have annexed a specimen; how it would be in cases where other kind of ticking marked with these letters A C A was wanted I do not know, as I have only handled this one kind.

16. To the sixteenth interrogatory he saith: I have never sold direct to consumers, and do not sufficiently know how they would describe or designate this ticking to answer this interrogatory.

17. To the seventeenth interrogatory he saith: We should unquestionably expect to receive that quality of ticking manufactured by the Amoskeag Manufacturing Company which has upon it a label like the one I have annexed, as that would be the ticking intended and understood to be called for by such an order.

18. To the eighteenth interrogatory he saith: We should understand him to mean that manufactured by the Amoskeag Manufacturing Company, having upon it the label like the one I have annexed, and should at once show him that quality.

136 19. To the nineteenth interrogatory he saith: I have only known but this one kind of ticking having upon it, in any manner, these letters, and that for about fifteen years; and this quality has generally during that time been known as either the Amoskeag A C A ticking, or as A C A ticking simply.

20. To the twentieth interrogatory he saith: The only kind of ticking I have known as thus designated is that understood to be manufactured by the Amoskeag Manufacturing Company; and this, as I have said before, has been accustomed to be known and designated as A C A ticking, and is thus known and designated by all of the parties referred to in this interrogatory.

21. To the twenty-first interrogatory he saith: I have had fifteen years' experience in selling the one kind of ticking thus marked, but as I have seen but the one way of using these letters I do not know to what extent, or how likely, other kinds of labels or works, using these letters, might be confounded.

22. To the twenty-second interrogatory he saith: I have never seen any ticket or label on ticking containing the words Omega A C A Ring Twist, and consequently I cannot answer further this interrogatory.

23. To the twenty-third interrogatory he saith: I am not aware that I can add any further statements hereto of advantage to either party.

X 1. To the first cross-interrogatory he saith: My statement of my acquaintance with this kind and quality of ticking is based upon my recollection only.

X 2. To the second cross-interrogatory he saith: I have never been an agent for the Amoskeag Manufacturing Co., nor had any arrangement with any party for the sale of their goods or of their tickets.

X 3. To the third cross-interrogatory he saith: My testimony upon these matters has been based entirely upon my experience in dealing with others.

X 4. To the fourth cross-interrogatory he saith: As my answer to the twenty-second interrogatory does not call for an answer to this interrogatory, I have none to make.

X 5. To the fifth cross-interrogatory he saith: I know of nothing more

which, in my opinion, will be of any special advantage or disadvantage to either party to this suit.

DUDLEY M. KEEN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 5th day of February, A. D. 1874.

RICH'D WAITE,
Commissioner.

(Endorsed:) Opened in open court and filed February 19, 1874.

137 *Commission to Burlington, Iowa.*

The execution of this commission appears in certain schedules hereunto annexed.

DANIEL M. HAMMACK,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn, and examined on the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-four, at the office of Daniel M. Hammack, in the city of Burlington, county of Des Moines, in the State of Iowa, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, Daniel M. Hammack, directed, for the examination of witnesses in a certain cause depending in said court, wherein The Amoskeag Manufacturing Company are plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

[SEAL.] DANIEL M. HAMMACK,
Commissioner.

B. LIEBSTADTER, of the city of Burlington, Des Moines County, Iowa, by occupation a dry goods dealer in said place, aged forty years and upwards, being duly sworn and examined on the part of the plaintiffs, or complainants, doth depose and say as follows:

1. To the first interrogatory he saith: My name is B. Liebstadter.
2. To the second interrogatory he saith: I reside at the city of Burlington, Iowa.
3. To the third interrogatory he saith: I have lived here about eighteen years.
4. To the fourth interrogatory he saith: My business is that of a dealer in dry goods in this place.
5. To the fifth interrogatory he saith: I have been in that business eight years; I have no partner now; the firm-name is B.
6. To the sixth interrogatory he saith: Yes; I purchase and sell ticking in my business.
7. To the seventh interrogatory he saith: I have become acquainted with the ticking, having on it the letters A C A in connection with the words Amoskeag Manufacturing Company, A. D. 1836, Power Loom, above the letters A C A, and Manchester, N. H., below the letters A C A. I attach a specimen of said ticking as part of my answer, with the ticket or label pasted on it. I am well acquainted with the ticking; the specimen attached is marked Exhibit A.

8. To the eighth interrogatory he saith: I have not met with any other label used upon ticking that I can specially describe now, other than the Amoskeag A C A. I know that there is other ticking with other labels, and it has been offered to me, but I cannot particularly describe the label, and I have none here to annex, as I do not deal in any other kind but the Amoskeag A C A; I have heard of another label similar somewhat to this, but I cannot describe it of my own knowledge, nor have I a specimen to attach.

9. To the ninth interrogatory he saith: I only deal in the Amoskeag A C A ticking, manufactured by the Amoskeag Manufacturing
138 Company, of Manchester, New Hampshire; I cannot of my own knowledge say by what house, firm, or corporation the other tickings and labels are manufactured or originally sold; the Amoskeag A C A ticking was purchased by me or my employees from jobbers at New York, Chicago, and Boston; the Amoskeag A C A was purchased by me or my employees in the course of our business, but none of the others has been; I purchased as a merchant, to sell again.

10. To the tenth interrogatory he saith: I believe the Amoskeag A C A ticking is manufactured, and has been, by the Amoskeag Manufacturing Company, of Manchester, N. H.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A ticking ever since I have been in the business; the others I have not dealt in at all, and I cannot say that I am acquainted them at all.

12. To the twelfth interrogatory he saith: The reputation of the Amoskeag A C A ticking has the best reputation among dealers generally of any ticking there is. I know other tickings by reputation, among them the Omega A C A; but the Amoskeag has a much better reputation and is better goods than the Omega; but I am not acquainted with the Omega except by hearing of it; I have never examined a label, and cannot attach a specimen; the Amoskeag to which I refer is that attached as Exhibit A; the Amoskeag A C A has a separate reputation among purchasers, as being the best American ticking; a specimen is attached marked Exhibit A.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A is the best ticking; it is the closest ticking; we have found that it never lets a feather through; it is a finer twill than any American ticking I know of; when customers buy it once they come for it again, and will usually take no other.

14. To the fourteenth interrogatory he saith: Some purchasers ask for Amoskeag A C A; there are many who ask simply for A C A tickings when they mean Amoskeag A C A, and want them; I have customers who know the Amoskeag A C A ticking, and when they want it ask simply for A C A, without saying Amoskeag; many in the trade order this ticking by simply ordering A C A, without designating it any more particularly; and when they do so order A C A they expect to get Amoskeag A C A.

15. To the fifteenth interrogatory he saith: I only deal in Amoskeag; dealers in purchasing from me often ask for A C A when they want Amoskeag A C A; I cannot say how they designate other tickings from my own experience, as I do not handle them.

16. To the sixteenth interrogatory he saith: Most of consumers call for A C A simply, without designating it any more particularly, when they want Amoskeag; my purchasers come to me and ask for A C A ticking when they want Amoskeag A C A; it is by that name, simply A C A, that this ticking, a specimen of which is attached as Exhibit A,

is generally known among consumers; as to how they designate the other kinds inquired about I cannot state, as my purchasers do not call for other kinds.

17. To the seventeenth interrogatory he saith: If I should order ticking simply calling it A C A, I should expect to receive Amoskeag A C A; and I think most dealers should so expect to get Amoskeag A C A by ordering A C A; I would expect no other but Amoskeag; I have ordered ticking as A C A when I wanted Amoskeag A C A, and got Amoskeag from the order; I would expect to find on it the same label that is attached to the specimen marked Exhibit A.

18. To the eighteenth interrogatory he saith: I would understand a consumer wanted Amoskeag A C A if he should ask me for A C A ticking; the full label on it would be the same as that on the
139 specimen attached and marked Exhibit A; I think the same would be the understanding of most merchants or dealers in this locality.

19. To the nineteenth interrogatory he saith: I have, and do know A C A ticking as the distinguishing designation of this Amoskeag A C A ticking; I have known it so designated ever since I have been in the business, some eight years; it is manufactured by the Amoskeag Manufacturing Company; a specimen of the same is attached marked Exhibit A; I have not known any other to be generally known as A C A ticking.

20. To the twentieth interrogatory he saith: Merchants and dealers in this locality have long designated one kind of ticking as A C A; it has been known and designated as A C A ever since I have been in the business, over eight years; I cannot say how long before that time; it is of the manufacture of the Amoskeag Manufacturing Company; the same kind as shown in the exhibit attached marked A; consumers and purchasers have also designated the Amoskeag A C A as A C A as long as I have been engaged in the business.

21. To the twenty-first interrogatory he saith: I have sold tickings marked with the letters A C A ever since I have been in business; we sell and deal in but the one kind, the Amoskeag A C A ticking; I do not know of my own knowledge of buyers being deceived in labels on tickings, but it would be easy to deceive a buyer by a label somewhat similar; this is my experience in other kinds of goods; as an instance I would state an instance; the Indian Head muslin has the head of Indian on it, and the Watrusset muslin also has the head of an Indian on it, and in nine of cases out of ten, in my experience, the Watrusset could be sold for the Indian Head, and I should think it would be the same in tickings. I cannot answer the question as fully, or in detail, as asked in the question, for the reason that I have no experience personally in any other ticking but the Amoskeag A C A.

22. I have seen a great deal of ticking marked with the label of the complainants, as I have stated in substance already; I have not seen the label marked with the words and letters Omega A C A Ring Twist that I remember of now, and from that fact I could not say how apt a buyer would be to be deceived by the latter, and think it was the make of the complainants.

23. To the twenty-third interrogatory he saith: I cannot add anything more of benefit to either party to the suit that I know of.

X 1. To the first cross-interrogatory he saith: I have no written memoranda or data; I became acquainted with the Amoskeag A C A ticking when I went into the business, over eight years ago; not having

A C A, that this ticking, a specimen of which is attached as Exhibit A,

stated as to my acquaintance with other kinds of tickings, I cannot state any order in which I became acquainted.

X 2. To the second cross-interrogatory he saith: I am not an agent of the Amoskeag Manufacturing Company; I have no arrangement for selling their goods; I buy their goods of jobbers, as I do any other goods that I deal in; I buy at New York, Chicago, or Boston, as I can do the best with dealers; I get my information from experience in business, from the general reputation of the ticking, and from the satisfaction this ticking gives customers and consumers, and not from any agency for the company manufacturing the ticking; I have not done any business for them, as I have said already.

X 3. To the third cross-interrogatory he saith: I meant both what I would understand and mean, and from my experience I think it the general understanding of the trade, and so meant it; and as to what consumers meant, was from the fact that my customers ask for A C A ticking when they wanted Amoskeag A C A.

140 X 4. To the fourth cross-interrogatory he saith: I did not so answer the twenty-second interrogatory, as I am not well acquainted with the Omega A C A Ring Twist; of my own knowledge I have not known of such a mistake.

X 5. To the fifth cross-interrogatory he saith: I do not know of anything further than I have already stated.

B. LIEBSTADTER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 17th day of February, 1874, A. D., before

DANIEL M. HAMMACK,
Commissioner.

ALEX. P. ERICKSON, of Burlington, Iowa; by occupation dry goods dealer; aged years and upwards; being duly sworn and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Alex. Erickson.

2. To the second interrogatory he saith: I reside at Burlington, Des Moines County, Iowa.

3. To the third interrogatory he saith: I have resided there about six years.

4. To the fourth interrogatory he saith: My occupation is that of a dry goods dealer.

5. To the fifth interrogatory he saith: I have been in business in this place about four years; my partners at present are, the names of my partners are Andrew Paterson, Chas. Arden; the name is A. P. Erickson & Co. I was in the employ of J. W. Rhodes before entering in the present firm; Mr. Rhodes was in the same business; I was with him near four years.

6. To the sixth interrogatory he saith: We do purchase and sell tickings.

7. To the seventh interrogatory he saith: We have become acquainted with the Amoskeag Manufacturing Company's ticking marked A C A; and also with the Omega Ring Twist A C A; I hereto annex specimens of each kind of ticking; the Amoskeag A C A ticking is marked Exhibit A; it has the words Amoskeag Manufacturing Company in semi-circle; inside the half circle the words and figures A. D. 1836, Power Loom; below, the letters A C A and Manchester, N. H., Yds.; the whole of the letters and figures in an oblong circle, which is surrounded by devices; the whole label being nearly square; I also attach a specimen of the

Omega A C A Ring Twist as Exhibit B; I cannot attach a label of it, as it has gone off the bolt; the label on it is the words Omega; below, letters A C A, and on the third line Ring Twist, Yds.

8. To the eighth interrogatory he saith: I have, and have attached specimens in answer to the last question; I have become acquainted with the two kinds as described in answer to interrogatory seventh, and of which two kinds I have annexed specimens as Exhibit A and Exhibit B in answer to the same question, No. seven; the ticking there annexed is the Amoskeag A C A, with the label on it marked Exhibit A; the Omega A C A Ring Twist is attached as Exhibit B, but I have attached no label of it, for the reason set out in answer to question seven, that the label is lost off.

9. To the ninth interrogatory he saith: We purchased from job-
141 bers; purchased the Omega A C A of Bell & Co., of this place; cannot tell of my own knowledge where it was made; I purchased of jobbers myself, sometimes in Chicago and sometimes here.

10. To the tenth interrogatory he saith: I cannot tell where the Omega A C A is made, of my own knowledge; the label does not state; I believe the Amoskeag is made at Manchester, New Hampshire.

11. To the eleventh interrogatory he saith: I cannot now state; I have known them since I have been in this business, both of them; don't know which I met first.

12. To the twelfth interrogatory he saith: The Omega has a good reputation, but the Amoskeag has the best; the Amoskeag A C A, which I have annexed a specimen of as Exhibit A, has the best reputation of any ticking, and is considered the best; the Omega A C A, referred to as Exhibit B, has a pretty good reputation, but not so good as the Amoskeag.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A is the best; it's a little heavier goods, and a little closer made, and a little narrower stripes, which suits the better, and is generally highest priced; I refer to it as Exhibit A.

14. To the fourteenth interrogatory he saith: I do not think they asked for any particular manufacture, but for good tickings; I am a retail dealer.

15. To the fifteenth interrogatory he saith: I always ask for the A C A to get a good quality; I generally state which brand I want, though; I would designate whether I wanted Amoskeag A C A or Omega A C A Ring Twist.

16. To the sixteenth interrogatory he saith: I have not found that they often designate them, sometimes they do; they often ask for A C A ticking, and will take the one that best suits them; I cannot answer more definitely as to each kind.

17. To the seventeenth interrogatory he saith: I should have to designate which kind I wanted; if I should order A C A merely I could not state what I would get, and I cannot tell what kind merchants in this locality would expect to get by so ordering it, or what label would be on it.

18. To the eighteenth interrogatory he saith: I could not tell which kind they wanted unless they designated them; I cannot tell what label would be on it.

19. To the nineteenth interrogatory he saith: I have known the Amoskeag A C A and the Omega Ring Twist A C A; I have known them since I have been in the business, and both tickings have been known as A C A since I knew anything about the business; they are

manufactured, the Amoskeag A C A by the Amoskeag Manufacturing Co.; I do not know who makes the other.

20. To the twentieth interrogatory he saith: I only say as I have to the nineteenth question; there are two kinds of ticking known as A C A that I am acquainted with; and as to the manufacturers of it, I refer as far as my knowledge goes to my answers to questions nineteen and nine and ten.

21. To the twenty-first interrogatory he saith: I have been selling tickings since I have been in the business; I should think if they go only by the brand, they might be deceived by seeing the letters A C A on both; if a purchaser wanted either ticking and should see the letters A C A, he might be easily be led to think that it was the other make if he was not well posted in tickings; if they wanted Amoskeag A C A and should be shown Omega A C A, by seeing the letters A C A they might be led to think it was Amoskeag A C A, because
142 the letters A C A are common to both labels; or it might be the same if they wanted Omega A C A and was shown the Amoskeag A C A.

22. To the twenty-second interrogatory he saith: I have already answered that I have seen both kinds, Amoskeag A C A and Omega A C A; they would be liable to be deceived by the Omega brand by looking at the label with the letters A C A on it, because A C A is on the Amoskeag, and seeing those letters A C A on the Omega A C A Ring Twist, if they did not understand fully each label or trade mark, might be led to think the Omega was the kind they wanted in case in fact they wanted Amoskeag A C A; it would not be strange if one not accustomed to the labels should be led astray.

23. To the twenty-third interrogatory he saith: I cannot, other than that, that we have frequently had customers, when looking at tickings and seeing the Omega with A C A on it, ask if it was the Amoskeag A C A, and being told it was not, decline to purchase the ticking; seeing the letters A C A would lead them to ask.

X 1. To the first cross-interrogatory he saith: I did not state any order in which I became acquainted with the ticking; I do not remember which of them I met first.

X 2. To the second cross-interrogatory he saith: I or our firm are not the agents of the Amoskeag Manufacturing Company; we have no arrangement for selling their goods; sell them, when we do sell them, as any other goods in the house.

X 3. To the third cross-interrogatory he saith: It is both what I would understand and what I think the trade do also; I have answered more particularly with reference to the manner in which I would and do order ticking, and what I would understand by such orders.

X 4. To the fourth cross-interrogatory he saith: I do not know of my own knowledge of any such mistake; if such mistake should occur it would probably be among consumers, people who were not posted on the labels; purchasers have asked me whether or not an Omega ticking at which they were looking, as well as the label on it, was not an Amoskeag A C A ticking; and I think if I had said it was they would not have known any better; it would not be likely to occur among people posted on tickings and the respective labels.

X 5. To the fifth cross-interrogatory he saith: I do not know anything further than I have stated already.

A. P. ERICKSON.

Examination taken, reduced to writing, and by the witness sworn to this 17th day February, 1874, A. D. before

DANIEL M. HAMMACK,
Commissioner.

H. C. SCHRAMM, of Burlington, Iowa, by occupation a retail dry goods merchant, aged twenty-seven years and upwards, being duly sworn, and examined on the part of the complainants, doth depose and say as follows:

1. To the first interrogatory he saith: My name is H. C. Schramm.

2. To the second interrogatory he saith: I reside at Burlington, in Des Moines County, Iowa.

3. To the third interrogatory he saith: I have lived there all my life; was born here.

4. To the fourth interrogatory he saith: My business is that of a dry goods merchant, retail business.

143 5. To the fifth interrogatory he saith: I have been engaged in that business about four years; my partner in the business is A C. Hutchison; the name and style of the firm is Hutchison & Schramm; we have been in business together about three years at this place.

6. To the sixth interrogatory he saith: Our firm purchases and sells tickings in the course of our business.

7. To the seventh interrogatory he saith: I have met the Amoskeag A C A; a sample of the same, with label on it, is hereto attached marked Exhibit A, to which I refer as a part of this answer.

8. To the eighth interrogatory he saith: I have not; I have met with but one A C A ticking; I have heard of another kind; I have annexed a specimen of the only kind I am acquainted with, it is marked Exhibit A, to which I refer for a full description of the label, &c.

9. To the ninth interrogatory he saith: We buy it from jobbers; do not know by whom it is made, that is, the Amoskeag A C A; I cannot say from my own knowledge who makes it; it is the only A C A ticking we deal in; we have a number of other brands, but no other A C A; we purchase from jobbers and Eastern dealers; it was purchased by us as merchants in the regular course of our business.

10. The Amoskeag Manufacturing Co., of Manchester, New Hampshire, are the manufacturers of the Amoskeag A C A ticking, of which I have annexed a specimen as Exhibit A.

11. To the eleventh interrogatory he saith: I have become acquainted with but one kind, the Amoskeag Manufacturing Company's ticking, marked A C A; I have known it ever since I have been in the dry goods business; I have been in business for myself four years, and for two years before as clerk for my father in the same business in this place.

12. To the twelfth interrogatory he saith: The Amoskeag A C A is the best ticking we sell, and gives the best satisfaction of any we sell; it has a better reputation in the trade than any other ticking made; I have heard of Omega A C A ticking, but its reputation is not so good; the Amoskeag A C A I attached specimen of as Exhibit A.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A is the best; superiority consists in quality and weight and closeness of texture; it is heavy and firm in make, and wears long and gives the best satisfaction.

14. To the fourteenth interrogatory he saith: When they want the Amoskeag A C A they designate it as Amoskeag generally; we do not deal in the Omega, and have no calls for it.

15. To the fifteenth interrogatory he saith: We always designate

which kind we want when we order; we order Amoskeag A C A knowing that there is another A C A; we do not order any other kind of A C A ticks; it is the only kind I have attached a label of.

16. To the sixteenth interrogatory he saith: They usually designate the kind they want, that is, they call on us for Amoskeag A C A; we deal in but the one kind, and if A C A is called for we give them Amoskeag; I cannot state how they designate any other A C A ticks, as we do not deal in any other and cannot answer separately to any other kind than this.

17. To the seventeenth interrogatory he saith: We should order by designating which kind we want; if Amoskeag A C A, we would designate it as that; I cannot say how other merchants in this locality would designate or order them; if we should order A C A simply, we we would intend to get Amoskeag A C A; but we would designate it so in the order.

144 18. To the eighteenth interrogatory he saith: If they want a good tick they usually ask for the A C A tick, and we would understand they wanted Amoskeag A C A; if they simply asked for A C A, and the full label would be the same as on Exhibit A hereto attached; we understand customers to ask for Amoskeag ticking if they say A C A only; some designate it fully as Amoskeag A C A, but not all, when asking for it.

19. To the nineteenth interrogatory he saith: Have known the Amoskeag A C A for the last six years; I have been in business four years, but formerly was a clerk in the same business and have known it as A C A ticking; I believe it is manufactured by the Amoskeag Manufacturing Company of Manchester, New Hampshire, but I do not know it of my own knowledge.

20. To the twentieth interrogatory he saith: Dealers and merchants know and designate the Amoskeag A C A ticking as A C A, and have since I have been in the business of dry goods; it is manufactured, to the best of my knowledge, and is manufactured as answered to interrogatory nineteen; a sample is attached as Exhibit A.

21. To the twenty-first interrogatory he saith: I have sold the Amoskeag A C A ever since I have been in the business; I am not acquainted with any other label than the Amoskeag A C A, and consequently cannot answer fully as to the latter part of the question, nor can I state whether purchasers would be apt to be deceived by the two labels; a good many people cannot tell the difference except by the quality; if A C A was on both they might be deceived; the same is the case in Waehusett and Indian Head muslin; each of them has the head of an Indian on it, and the consumers will, in the majority of cases, not know the difference; if, for instance, they ask for Wachusett and Indian Head was shown them, the buyer would not know the difference; and they might be deceived in similar labels in any kind of goods; but as we deal only in the one kind, I cannot answer in detail as asked for in regard to the tickings, as I do not know of special cases.

22. To the twenty-second interrogatory he saith: I have already stated that I have seen ticking marked with the label of complainants, containing Amoskeag Manufacturing Company and the letters A C A; I have not seen the other, Omega A C A Ring Twist, and have not sufficient knowledge to answer the interrogatory in detail, as desired and requested in interrogatory.

23. To the twenty-third interrogatory he saith: I do not.

X 1. To the first cross-interrogatory he saith: I have not stated any order in which I became acquainted with the ticking; I have no writ-

ten memoranda, but I have known it since I have been in the dry goods business.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company; we sell their goods the same as we do any other goods—buy from jobbers and sell again; have no arrangement with the Amoskeag Manufacturing Co.; my information is not derived from acting as their agent.

X 3. To the third cross-interrogatory he saith: If they want a good tick we recommend the A C A, as it always gives good satisfaction; I have meant what I would understand, and I think the trade would generally understand so.

X 4. To the fourth cross-interrogatory he saith: They might buy the Omega because it was cheaper than A C A Amoskeag; I have not known of such cases of my own knowledge, I mean of one being mistaken by the other; I presume such mistake would be made, if at all, by parties who did not know the qualities of goods by weight, &c., very well.

X 5. To the fifth cross-interrogatory he saith: I do not; persons
145 have told us they could buy A C A cheaper than we could sell them; I do not know anything further.

H. C. SCHRAMM.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 17th day of February, A. D. 1874, before

DANIEL M. HAMMACK,
Commissioner.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants, this ticking and label was produced and shown to B. Liebstadter, Alex. P. Erickson, and H. C. Schramm, and by them deposed unto at the time of the examination, and by them referred to in said examination as Exhibit A.

DANIEL M. HAMMACK,
Commissioner.

H. C. SCHRAMM.
A. P. ERICKSON.
B. LIEBSTADTER.

At the execution of a commission for the examination of witnesses between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants, this ticking was produced and shown to Alex. Erickson, and by him deposed unto at the time of the examination, and in said examination referred to as Exhibit B.

DANIEL M. HAMMACK,
Commissioner.

A. P. ERICKSON.

(Endorsed:) Opened in open court and filed February 26, 1874.

146 Commission to Detroit, Michigan.

The execution of this commission appears in certain schedules hereunto annexed.

ADDISON MANDELL,
Commissioner.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn, and examined on the 20th day of January, in the year of our Lord one thousand eight hundred and seventy-four, and continued from day to day at my office, in the post-office building, in the city of Detroit, in the State of Michigan, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, Addison Mandell, directed, for the examination of witnesses in a certain cause depending in said court, wherein The Amoskeag Manufacturing Company are plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, co-partners, trading as D. Trainer & Sons, are defendants.

JAMES LOWRIE, of Grosse Isle, Wayne County, Michigan, and doing business in the city of Detroit, in said county and State, aged sixty years, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is James Lowrie.

2. To the second interrogatory he saith: My residence is on Grosse Isle, Wayne County, Michigan, about eighteen miles from Detroit, and doing business as a merchant in said Detroit.

3. To the third interrogatory he saith: I have lived at Grosse Isle about eighteen years, and about fifteen years in Detroit previous to residing on Grosse Isle.

4. To the fourth interrogatory he saith: Retailing of dry goods.

5. To the fifth interrogatory he saith: I have been such business in Detroit for about thirty years; my two sons, George and William Lowrie, are my present partners in said business; and have never been employed since I commenced business, by any person, firm, or corporation.

6. To the sixth interrogatory he saith: My firm does purchase and sell tickings in the course of its business.

7. To the seventh interrogatory he saith: I have in the course of my business become acquainted with ticking labelled or lettered with a label having upon it the words Amoskeag A C A; I have not at present a specimen of the label, except that which I identify as the same as upon ticking purchased by my firm; which label, with a specimen of ticking, is hereto annexed marked Exhibit A; said firm has for the past fifteen years purchased and sold ticking of that quality and with such label.

8. To the eighth interrogatory he saith: I have no recollection of having, in the course of my business, met or become acquainted with any labels, tickets, or cards, used upon ticking, either alone or in connection with any other device, words, letters, or figures, the letters A C A, other than is attached to said Exhibit A.

9. To the ninth interrogatory he saith: My firm has purchased the Amoskeag A C A tickings from Cochran, McLean & Co.,
147 of New York, and of other parties in New York, similar to that of Exhibit A; but he does not remember of ever having purchased any other tickings with labels containing the letters A C A; although he has purchased largely of other tickings, none of which contained those letters to his recollection; and he always supposed that the tickings which he purchased, and containing those letters, were manufactured by the Amoskeag Manufacturing Company.

10. To the tenth interrogatory he saith: I have no recollection of any

other tickings marked with the letters A C A than I have testified to, and I have always supposed them to be manufactured by the Amoskeag Manufacturing Company, as I have before testified.

11. To the eleventh interrogatory he saith: He has been in business in Detroit about thirty years, and has known of the kind and quality contained in Exhibit A as far as I can recollect.

12. To the twelfth interrogatory he saith: He knows of no other tickings having labels marked with the letters A C A, and therefore can give no testimony as to their reputation or comparative value; but he has always considered the Amoskeag A C A ticking the most reliable, and as good as any, if not the best, in the market for family uses; and in his dealings he has always recommended them as such.

13. To the thirteenth interrogatory he said: As I have before testified, in my opinion the Amoskeag A C A is the best ticking in the market, and its superiority consists in its durability, firmness, and uniform manufacture, as well as being feather proof; so I have always considered it.

14. To the fourteenth interrogatory he saith: He cannot answer this question except to say he has no recollection of any of his customers asking for tickings marked with the letters A C A, or any other letters; but they usually ask for the best, and when they ask for the best he recommends the Amoskeag A C A.

15. To the fifteenth interrogatory he saith: When he orders the tickings A C A he orders Amoskeag A C A; when our firm wants other tickings, we order, giving the name of the tickings and the price, to inform our correspondents what we require; he does not know how other merchants describe to their correspondents the kind and quality of the ticking they want.

16. To the sixteenth interrogatory he saith: That from his experience consumers generally do not know one brand from another; he has no recollection at present of any particular brand of ticking being asked for, as in his opinion consumers are unacquainted with the different brands; but when consumers ask for the best, he always shows them the Amoskeag A C A brand, or the Pearl River brand, which is considered the second to the Amoskeag manufacture.

17. To the seventeenth interrogatory he saith: He and other merchants would understand by the term A C A ticking that manufactured by the Amoskeag Manufacturing Company.

18. To the eighteenth interrogatory he saith: He would understand the consumer to mean the Amoskeag A C A, and the full label would be as in Exhibit A.

19. To the nineteenth interrogatory he saith: He does know, and for many years—say for fifteen or sixteen years past—has known A C A ticking as the distinguishing designation of a certain article of ticking in the market; he only knows this from his recollections of having purchased and sold ticking manufactured by the Amoskeag Manufacturing Company which he thinks bore that mark.

20. To the twentieth interrogatory he saith: I think they do,
148 and of the manufacture of the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: He thinks he has bought and sold such tickings marked A C A for over fifteen years last past, and has had experience to that extent; he says he has had no such experience as would enable him to give an intelligent answer to the re-

mainder of the interrogatory, and that he has no knowledge of the matter therein inquired of.

22. To the twenty-second interrogatory he saith: He has seen tickings marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A (as in Exhibit A); but he has never to his recollection seen a ticket or label upon ticking containing the words Omega A C A Ring Twist; and not having seen the latter, he cannot answer intelligently the latter part of the interrogatory.

23. To the twenty-third and last interrogatory he saith: He cannot.

X 1. To the first cross-interrogatory he saith: He has not testified to any other or different tickings than such as that marked Exhibit A, with any intention of describing them.

X 2. To the second cross-interrogatory he saith: He is not and never has been the agent of the Amoskeag Manufacturing Company, or any company, for the sale of their tickings, and have had no business or other arrangements with them for any purpose; he has simply purchased their manufactures in the market as he has others, and sold them again.

X 3. To the third cross-interrogatory he saith: He has; and answered as to his own understanding and experience.

X 4. To the fourth cross-interrogatory he saith: He did not so testify, and therefore has no knowledge upon the subject.

X 5. To the fifth cross-interrogatory he saith: He knows nothing.

JAMES LOWRIE.

Examination taken, reduced to writing, and by the witness subscribed to, this 20th day of January, A. D. 1874, before—

ADDISON MANDELL,
Commissioner.

CHARLES BUNCHER, of Detroit, Wayne County, Michigan, aged thirty-five years, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Charles Buncher.

2. To the second interrogatory he saith: In Detroit, Michigan.

3. To the third interrogatory he saith: About eight years.

4. To the fourth interrogatory he saith: I am one of the firm of Edson, Moore & Co., wholesale dry goods merchants in said Detroit.

5. To the fifth interrogatory he saith: Have been in business these two years last past; James L. Edson, George F. Moore, Ransom Gillis and Stephen Baldwin are my partners in said firm; he is employed by no other firm.

6. To the sixth interrogatory he saith: His said firm do purchase and sell tickings in their business.

149 7. To the seventh interrogatory he saith: He has in the course of his business become acquainted with ticking labelled or lettered with a label having upon it the letters A C A, and he refers to Exhibit A hereto annexed as a specimen of such ticking and of the label thereto attached.

8. To the eighth interrogatory he saith: He has not met or become acquainted with any such in the course of the business of said firm, and therefore cannot annex a specimen of any such.

9. To the ninth interrogatory he saith: He can only state that the specimen of ticking and label marked Exhibit A is the only kind of ticking with label A C A his firm has ever dealt in; and that tickings,

of which Exhibit A is a specimen, have been purchased by his firm of Gardner Brewer & Co., agents for the Amoskeag Manufacturing Company in New York and Boston; such tickings were purchased by his said firm in the course of its business.

10. To the tenth interrogatory he saith: His belief that the A C A ticking marked Exhibit A is manufactured by the Amoskeag Manufacturing Company, of Manchester, New Hampshire.

11. To the eleventh interrogatory he saith: He first became acquainted with the ticking, a specimen of which is marked Exhibit A, in the year 1856, as he believes; he has never known any others with the mark A C A.

12. To the twelfth interrogatory he saith: That in his opinion the ticking marked A C A has the best reputation of any ticking made, known to the trade; as I know of no other ticking marked A C A, I cannot answer as to the reputation of any other, and therefore can give no further answer to this interrogatory.

13. To the thirteenth interrogatory he saith: That specimen marked Exhibit A is superior to any other ticking known by him in its general manufacture, being in his opinion better made than any other ticking.

14. To the fourteenth interrogatory he saith: Purchasers of tickings of his firm, who desire a superior article of ticking, in ordering or asking for the same simply say A C A tick or ticking simply.

15. To the fifteenth interrogatory he saith: In ordering of the New York buyer for said firm we would simply say A C A tick, expecting to receive the Amoskeag A C A ticking and nothing else; if the firm desired a ticking of any other letters, he would designate them as Amoskeag A, B, C or D, such as they might require, and would expect to receive the Amoskeag manufacture; and such is the practice, so far as he knows, of other wholesale houses in Detroit.

16. To the sixteenth interrogatory he saith: His firm does not sell directly to consumers, but to other dealers, and therefore cannot answer how consumers describe or designate the article they require.

17. To the seventeenth interrogatory he saith: Such manufacture of ticking, and with the label as marked, in said Exhibit A.

18. To the eighteenth interrogatory he saith: He would understand him to mean A C A ticking, similar to the specimen Exhibit A, and labelled as in said Exhibit A.

19. To the nineteenth interrogatory he saith: He does know, and has known for about eighteen years, A C A ticking as the distinguishing designation of a certain article of ticking in the market; the extent of his knowledge is in the buying and selling the ticking so marked,
150 as in Exhibit A, for the period of about eighteen years; and the same is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants and dealers in ticking, and purchasers and consumers thereof, in this locality, so far as he knows, do, and have for the past eighteen years—the term of his experience, been accustomed to designate a ticking, such as in Exhibit A, as A C A ticking, and manufactured by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: For about eighteen years as before stated, he has had experience in the sale of tickings marked A C A; that with experienced retail buyers, in his opinion, they would not be led readily to believe that any other ticking simply containing the letters A C A, no matter what other device it contained, was equal in value to the article labelled Exhibit A; inexperienced buyers might be imposed upon, and the use of the letters A C A, even if

combined with other devices, might be sold to them as Amoskeag manufacture, they not being conversant with the tickets or trade marks of the Amoskeag Company, but simply having in their minds the letters A C A, as being the mark of a superior or the best article of ticking known to the trade.

22. To the twenty-second interrogatory he saith: He has answered that he has had experience in the sale of tickings marked with the letters A C A, and has seen ticking marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A, as marked in Exhibit A, and he says he has never seen, to his knowledge, a ticket or label upon ticking containing the words or letters Omega A C A Ring Twist, and therefore he cannot say whether the public or purchasers would be led to believe that the ticking marked as last described in this interrogatory was that manufactured by the complainants, and marked as first mentioned in this interrogatory.

23. To the twenty-third and last interrogatory he saith: He knows nothing, and cannot set forth anything, further than above stated, which may be a benefit or advantage to the parties at issue, except, and he says that in his opinion, the ticking of which Exhibit A is a specimen is the best article of ticking known to the trade; and that the use of the letters A C A upon any other manufacture of ticking would be likely to enhance its market value where purchasers were acquainted with the brand A C A and its value as a leading brand with the expectation of getting an enhanced price on account of the reputation of the brand A C A.

X 1. To the first cross-interrogatory he saith: He has been a jobber of dry goods for eighteen years, and his acquaintance began with the brand A C A when he commenced business; he is not acquainted with the other at all; he has no memorandum or written entry from which he testifies.

X 2. To the second cross-interrogatory he saith: He is not and never has been the agent of the Amoskeag Manufacturing Company; there is no arrangement, except that we purchase such goods as we require of the agents of said company, and pay for them; he has no information derived by him as agent, or in any other way than purchasing and selling the articles named; and has done no business for said company.

X 3. To the third cross-interrogatory he saith: Yes; and from my experience as a wholesale dealer in dry goods as to what my customers would expect of my firm when ordering ticking A C A, and what said firm requires when purchasing from the agents of the manufacturers.

X 4. To the fourth cross-interrogatory he saith: He has not in his answer to the twenty-second interrogatory stated as in this cross-interrogatory inquired of; and not having seen the Omega Ring Twist, he cannot answer this cross-interrogatory further intelligently.

151 X 5. To the fifth cross-interrogatory he saith: He knows nothing to the advantage of the defendants in this cause, and therefore can state nothing.

CHARLES BUNCHER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 21st day of January, A. D. 1874, before

ADDISON MANDELL,
Commissioner.

CHARLES H. LOCKE, of Detroit, Wayne County, Michigan, aged about

forty-four years, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: Charles H. Locke.

2. To the second interrogatory he saith: In the city of Detroit, Michigan.

3. To the third interrogatory he saith: About twenty-five years.

4. To the fourth interrogatory he saith: Dry goods retailer; dealer in dry goods generally.

5. To the fifth interrogatory he saith: About four years alone; formerly of the firm of Gunn & Locke; have no partner and am employed by no firm, person or corporation.

6. To the sixth interrogatory he saith: I do purchase and sell ticking in the course of my business.

7. To the seventh interrogatory he saith: I keep that kind of A C A ticking on hand for sale all the time, and I refer to Exhibit A hereto annexed as a specimen of said ticking and of the label thereto attached.

8. To the eighth interrogatory he saith: I have not met or become acquainted with any such in the course of my business, and therefore cannot annex a specimen of any such.

9. To the ninth interrogatory he saith: I can only state that the specimen of ticking labelled, and label marked Exhibit A, is the only kind of ticking with label A C A I have ever dealt in, and that ticking of which Exhibit A is a specimen has been purchased by me of several firms in New York—Cochran, McLean & Co., H. B. Claflin & Co., and others.

10. To the tenth interrogatory he saith: I believe that the A C A ticking marked Exhibit A is manufactured by the Amoskeag Manufacturing Company, of Manchester, New Hampshire.

11. To the eleventh interrogatory he saith: I first became acquainted with the ticking, a specimen of which is marked A C A, in the year 1856; I have never known any other marked A C A.

12. To the twelfth interrogatory he saith: The ticking marked A C A has the best reputation of any ticking known to the trade; and as I know of no other ticking marked A C A, I cannot answer as to the reputation of any other, and therefore can give no further answer to this interrogatory.

13. To the thirteenth interrogatory he saith: Specimen marked Exhibit A is superior to any other ticking known by me; in my opinion it is better made than an other.

14. To the fourteenth interrogatory he saith: In asking or ordering ticking of that quality, they simply ask for A C A tickings.

152 15. To the fifteenth interrogatory he saith: In ordering tickings I would simply say A C A tickings, expecting to receive the Amoskeag A C A ticking and nothing else; if I desire a ticking of any other letter I would designate them as Amoskeag A, B, C or D as I might require, and would expect to receive the Amoskeag manufacture; and such is the practice, so far as I know, of other dealers in Detroit.

16. To the sixteenth interrogatory he saith: I should say that in my experience consumers do not know one brand from another, but when they ask me for the best ticking I always show them the Amoskeag A C A, and recommend it to them as the best.

17. To the seventeenth interrogatory he saith: Such manufacture of ticking with the label marked as Exhibit A.

18. To the eighteenth interrogatory he saith: I would understand him to mean A C A ticking similar to the specimen Exhibit A, and labelled as in said Exhibit A.

19. To the nineteenth interrogatory he saith: I do know, and have

known for about eighteen years, A C A ticking as the distinguishing designation of a certain article of ticking in the market; the extent of my knowledge in buying and selling the ticking marked as Exhibit A for about eighteen years; and the same is manufactured by the Amoskeag Manufacturing Company.

20. To the twentieth interrogatory he saith: Merchants and dealers in ticking, and purchasers and consumers thereof in this locality, so far as I know, do, and have for the past eighteen years or more, been accustomed to designate a ticking, such as in Exhibit A, as A C A ticking, and manufactured by the Amoskeag Manufacturing Company.

21. To the twenty-first interrogatory he saith: For about eighteen years, as before stated, I have had experience in the sale of ticking marked A C A; with experienced retail buyers, in my opinion, they would not be led readily to believe that any other ticking, simply containing the letters A C A, no matter what other device it contained, was equal in value to the article labelled Exhibit A; inexperienced buyers might be imposed upon, and the use of the letters A C A, even if combined with other devices, might be sold to them as of Amoskeag manufacture, they not being conversant with the ticket or trade-mark of the Amoskeag Company; but simply having in their minds the letters A C A as being the mark of the superior or best article of ticking known to the trade.

22. To the twenty-second interrogatory he saith: I have had experience in the purchase and sale of tickings marked A C A, and have seen tickings marked with the label of the complainants in this case, containing amongst other things the words Amoskeag Manufacturing Company and the letters A C A, as marked in Exhibit A. I have also seen ticking with the ticket or label containing the words and letters Omega A C A Ring Twist, but don't remember that I ever purchased or sold any of that stamp; in my opinion, inexperienced persons would be misled in supposing the ticket labelled Omega A C A Ring Twist to be the ticking of the Amoskeag Manufacturing Company, not knowing what other devices accompanied the letters A C A.

23. To the twenty-third interrogatory he saith: I cannot.

X 1. To the first cross-interrogatory he saith: I became acquainted with the Amoskeag A C A ticking about eighteen years ago; don't know when I saw Omega A C A Ring Twist ticking, but I have seen it in New York in market, and in Detroit; but believe I never dealt in it.

X 2. To the second cross-interrogatory he saith: I have never been an agent of the Amoskeag Manufacturing Company, or of any company, for the sale of their tickings, and have had no business arrange-
153 ments with any company, but have simply purchased their goods in the market as I needed them in my own trade.

X 3. In answer to the third cross-interrogatory he saith: Yes.

X 4. In answer to the fourth cross-interrogatory he saith: I never knew such a mistake to be committed; but as I said before, such a mistake might occur among inexperienced buyers, who would know o a valuable ticking marked A C A, but who might not know what other devices might be upon the label or brand, and thereby be deceived.

X 5. In answer to the fifth cross-interrogatory he saith: I do not.

CHARLES H. LOCKE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 19th day of March, A. D. 1874.

ADDISON MANDELL,
Commissioner.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, co-partners, trading as D. Trainer & Sons, are defendants, this ticking and label was produced and shown to James Lowrie and Charles Buncher, witnesses, and by them deposed unto at the time of the examination. Said ticking and label are marked Exhibit A.

JAMES LOWRIE,
CHARLES H. LOCKE,
CHARLES BUNCHER,
Witnesses.

A. MANDELL,
Commissioner.

(Endorsed:) Opened in open court and filed March 24, 1874.

154 *Commission to Dubuque, Iowa*

The execution of this commission appears in certain schedules hereto annexed.

WILLIAM GRAHAM,
Commissioner.

DUBUQUE, *May* 30, 1874.

The interrogatories and cross-interrogatories on this commission are the same as those printed on pages 3 to 9.

Depositions of witnesses produced, sworn and examined on the 22d day of February, in the year of our Lord one thousand eight hundred and seventy-four, and continued by adjournment from day to day at the office of William Graham, in the city of Dubuque, county of Dubuque, in the State of Iowa, under and by virtue of a commission issued out of the circuit court of the United States, in and for the eastern district of Pennsylvania, for the third circuit, to me, William Graham, directed, for the examination of witnesses in a certain cause depending in said court, wherein the Amoskeag Manufacturing Company are plaintiffs, and David Trainer, J. Newiin Trainer, William Trainer and Edward Trainer, co-partners, trading as D. Trainer & Sons, are defendants.

JAMES LEVI, of the city and county of Dubuque, State of Iowa, aged twenty-nine years and upward, being duly sworn and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is James Levi.
2. To the second interrogatory he saith: I reside in the city of Dubuque, county of Dubuque, State of Iowa.
3. To the third interrogatory he saith: I have lived in Dubuque eighteen years.
4. To the fourth interrogatory he saith: I am a dealer in dry goods.
5. To the fifth interrogatory he saith: I have sold dry goods since 1857; I have been in business for myself since 1862, and have no partners.
6. To the sixth interrogatory he saith: I do buy and sell tickings in my business.
7. To the seventh interrogatory he saith: I have become acquainted with tickings labelled with a card having on it the letters A C A in connection with other words or letters; one marked Amoskeag A C A, and

another marked Omega A C A, which are all I can think of at present. I have no card of Omega, as I never keep it. I here produce a specimen of the Amoskeag A C A card, and of the ticking from which the same was taken.

(The witness here produced a card or label with a specimen of ticking attached thereto, which is hereto attached marked Exhibit A.)

8. To the eighth interrogatory he saith: In answer to the foregoing interrogatory, the seventh, I have said that I have become acquainted with two such labels or cards, the Amoskeag A C A and the Omega A C A, and that I have annexed a specimen of the Amoskeag A C A, with a specimen of the ticking. I cannot annex a specimen of the Omega A C A, as I have none in my possession.

9. To the ninth interrogatory he saith: I do not know by whom the specimen I attach was originally manufactured or sold, nor from whom I purchased it. I bought it in the ordinary course of my business as merchant. I have bought the Amoskeag A C A ticking of dif-
155 ferent parties, and do not remember of ever buying any other A C A tick but the Amoskeag.

10. To the tenth interrogatory he saith: My belief is that the Amoskeag Manufacturing Company manufactured the specimen which I have annexed; as to who manufactures the Omega A C A I have no knowledge or information sufficient to form a belief.

11. To the eleventh interrogatory he saith: I do not know any ticking marked A C A, except Amoskeag and Omega. I think I have known the Amoskeag A C A for ten or twelve years, perhaps longer; I think I saw the Omega A C A in New York two or three years ago.

12. To the twelfth interrogatory he saith: The Amoskeag A C A ticking has a good reputation; the others I never kept, and don't recollect of ever having had a call for them. I suppose the several tickings marked A C A have separate and distinct reputations as to quality, with persons who deal in them in this locality. The reputation of the Amoskeag A C A is the highest, and I think that is its reputation with the public generally, and amongst purchasers of tickings.

13. To the thirteenth interrogatory he saith: I always consider the Amoskeag A C A ticking the best A C A ticking made; its superiority consists in being fine and close, and not so heavy or weighty as some other similar goods, which makes some purchasers prefer them.

14. To the fourteenth interrogatory he saith: So far as my experience goes, purchasers who desire to buy tickings marked A C A, do not always ask for A C A tickings simply, but generally describe them as Amoskeag A C A, Omega A C A, or otherwise, as the case might be.

15. To the fifteenth interrogatory he saith: Persons dealing in tickings, when they intend to purchase A C A ticking, designate the same by the manufacturer's name, as well as by the letters A C A, as Amoskeag A C A, Omega A C A, Eagle A C A, &c.

16. To the sixteenth interrogatory he saith: Some people that wish ticking, ask for A C A tick, but I do not understand them to mean the manufacture of any particular company or firm; if they wanted the article made by any one manufacturer, they would, I think, give the full name as well as the letters A C A.

17. To the seventeenth interrogatory he saith: If we should order A C A ticking merely, we would expect to find upon such ticking the label of that manufacturer of ticking which the jobber or wholesale dealer dealt in or was agent for, and it would be intended and understood that such manufacture would be what we wanted, whether the jobber or

wholesale dealer dealt in Amoskeag A C A, Omega A C A, or other A C A brands.

18. To the eighteenth interrogatory he saith: If a consumer comes to me and asks for A C A ticking merely, I would show him any A C A ticking I might happen to have on hand; I could not tell what manufacture of ticking he would mean, unless he would give the full name.

19. To the nineteenth interrogatory he saith: I cannot say that I do.

20. To the twentieth interrogatory he saith: I cannot say that they do.

21. To the twenty-first interrogatory he saith: To the best of my recollection I never sold any A C A ticking but the Amoskeag A C A. I have dealt in that for about twelve years. My recollection of the label on the Omega A C A is so indistinct, not having any specimen, that I cannot give an opinion upon the matter inquired of.

156 22. To the twenty-second interrogatory he saith: I have seen ticking marked with the label of the plaintiffs, and sold it. I have also seen ticking having on it a label containing the words Omega A C A Ring Twist; in my opinion, the public and purchasers of tickings would not be readily led to believe that the ticking marked Omega A C A Ring Twist was that manufactured by the plaintiffs and marked Amoskeag Manufacturing Company A C A, because the Amoskeag A C A goods are so much superior to the Omega.

23. To the twenty-third interrogatory he saith: I do not know of any other matter or thing material.

And the said witness upon his cross-examination deposes:

X 1. To the first cross-interrogatory he saith: Simply from recollection. I have no memorandum.

X 2. To the second cross-interrogatory he saith: I am not; have no arrangement for selling their goods. I buy in the market for my own account. I have never done any business for plaintiffs. My information in reference to the subject-matter was gained in the prosecution of my own business.

X 3. To the third cross-interrogatory he saith: Substantially so.

X 4. To the fourth cross-interrogatory he saith: I have not so stated, as I have never known such a mistake to have been committed.

X 5. To the fifth cross-interrogatory he saith: I do not.

JAS. LEVI.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 22d day of February, A. D. 1874, before me.

WILLIAM GRAHAM,
Commissioner.

Being unable to procure the attendance of the other witnesses, the further taking of depositions was continued to March 13th, 1874, at 10 o'clock a. m.

WILLIAM GRAHAM,
Commissioner.

Taking of depositions under this commission resumed at my office, March 13th, 1874, at 10 o'clock a. m.

WILLIAM GRAHAM,
Commissioner.

AUGUSTUS CHRISTMAN, of the city and county of Dubuque, State of

Iowa, aged thirty-six years and upwards, being duly sworn, and examined on the part of the plaintiffs, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Augustus Christman.

2. To the second interrogatory he saith: I reside at the city of Dubuque, county of Dubuque, State of Iowa.

3. To the third interrogatory he saith: I have resided in the city of Dubuque since 1852.

4. To the fourth interrogatory he saith: I am a dealer in dry goods and carpets.

5. To the fifth interrogatory he saith: Since 1865. I am at present in partnership with Jacob Christman. I am not employed by anybody.

6. To the sixth interrogatory he saith: We do purchase and sell tickings in our business.

7. To the seventh interrogatory he saith: In the course of my business I have become acquainted with tickings labelled with tickets
157 or cards having on them the letters A C A with other letters. I have one such before me, which I hereto annex, marked Exhibit A. Beside the specimen annexed which is marked Amoskeag Manufacturing Company A C A, I have seen tickings having on them Omega A C A Ring Twist, and Uncasville A C A, together with other words and figures or letters which I cannot now describe.

(The witness here offers a specimen of ticking having on it a card or label (being the same mentioned in the deposition of James Levy), which is hereto attached, marked Exhibit A.)

8. To the eighth interrogatory he saith: I have met labels, tickets, or cards used upon tickings and marked A C A. I have seen the one of which I annex a specimen. I have also seen tickets or cards marked Omega A C A, and Uncasville A C A, but I have none such in my possession, and cannot annex a specimen.

9. To the ninth interrogatory he saith: As far as I know, the specimen I annex was manufactured by the plaintiffs. I never purchased or sold any of the others that I now recollect of, and do not know anything about their manufacture. I have bought the Amoskeag A C A of H. B Claflin & Co., Field, Leiter & Co., and J. V. Farwell & Co., of Chicago, and probably of others, but I do not now recollect. They were purchased in the usual course of our business.

10. To the tenth interrogatory he saith: I have no knowledge, information, or belief as to the matters inquired of, except as answered in the preceding answer.

11. To the eleventh interrogatory he saith: The specimen I annex was the ticking I met with first, which was about the time I first went into business. I have met the others when purchasing goods, but cannot tell when, nor the order in which I met them.

12. To the twelfth interrogatory he saith: The Amoskeag A C A ticking suits our trade very well. They are our standard ticking, and sell readily; the several tickings marked A C A have separate and distinct reputations as to quality, with persons who deal in them in this locality, and also among dealers in dry goods, but I do not think they have to any great extent among consumers in this locality; the reputation of the Amoskeag A C A is the highest.

13. To the thirteenth interrogatory he saith: In my judgment, the Amoskeag A C A is the best. I consider it a better color, firmer, and heavier than the others; not having specimens of the others before me I cannot say positively, but such is my recollection.

14. To the fourteenth interrogatory he saith: Purchasers do not generally ask for A C A tickings simply. They generally, since there are other tickings in the market marked A C A, describe them as Amoskeag A C A, Omega A C A, or Uncasville A C A, as the case may be.

15. To the fifteenth interrogatory he saith: I cannot answer this interrogatory in any other manner than my answer to the preceding interrogatory, the fourteenth.

16. To the sixteenth interrogatory he saith: I have never dealt in any ticking marked A C A, except the Amoskeag A C A, so I cannot answer as to the others; when consumers ask for the best ticking for feathers, I show them the Amoskeag A C A.

17. To the seventeenth interrogatory he saith: If I was to order "A C A ticking" of a wholesale dealer, merely, without further designation of the manufacturer, I should expect him to send me the kind that he dealt in, or was agent for, whether Amoskeag A C A, Uncasville A C A, or Omega A C A, as the case might be, unless I knew that he dealt exclusively in the Amoskeag A C A, in which case I should expect that brand only.

158 18. To the eighteenth interrogatory he saith: Any ticking marked A C A; I would not understand him to mean any particular manufacture. If a purchaser should come to my store and ask for A C A ticking, I would show him any A C A ticking that I might have.

19. To the nineteenth interrogatory he saith: I cannot say that I do.

20. To the twentieth interrogatory he saith: I cannot say that I do.

21. To the twenty-first interrogatory he saith: I have sold Amoskeag A C A ticking ever since I have been in business, and found them to give the best satisfaction to our trade; I have never to my knowledge sold any other A C A ticking; I may have done so, but do not now remember it; I have no specimens of any labels other than that of the Amoskeag A C A ticking before me, but I think the public generally would not readily be led to believe that the label on the Omega A C A, was the same as the Amoskeag A C A; I cannot say as to the Uncasville.

22. To the twenty-second interrogatory he saith: I have answered that I have seen ticking marked with the label of the Amoskeag Manufacturing Company and the letters A C A, and also a label or ticket upon ticking marked or lettered Omega A C A Ring Twist; I do not think that the public and purchasers of tickings would be readily led to believe that the ticking marked Omega A C A Ring Twist, was that manufactured by the plaintiffs, and marked Amoskeag Manufacturing Company A C A.

23. To the twenty-third interrogatory he saith: I know of nothing further.

And the said witness upon his cross-examination deposes:

X 1. To the first cross-interrogatory he saith: I speak from recollection alone; I have no memoranda.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company, and never have been; I have no arrangement with them whatever, and have never done any business for them; the information I possess is derived from the transaction of my own business.

X 3. To the third cross-interrogatory he saith: Yes; in effect.

X 4. To the fourth cross-interrogatory he saith: I did not answer the

interrogatory in that way; I have never known of any such mistake being committed.

X 5. To the fifth cross-interrogatory he saith: I do not.

A. CHRISTMAN.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 13th day of March, A. D. 1874, before me.

WILLIAM GRAHAM,
Commissioner.

The other witness, G. H. McDonald, being absent from the city, the further taking of depositions under this commission is adjourned to April 10th, 1874, at 10 o'clock a. m.

WILLIAM GRAHAM,
Commissioner.

On this 10th day of April, 1874, the said witness, G. H. McDonald, being confined to his house by illness, the further taking of depositions under the annexed commission is adjourned to May 7th, 1874, at 9 o'clock a. m.

WILLIAM GRAHAM,
Commissioner.

159 On this 7th day of May, 1874, in consequence of the illness of the commissioner, the further taking of depositions is adjourned to the 30th day of May, A. D. 1874, at ten o'clock a. m.

WILLIAM GRAHAM.

On this 30th day of May, A. D. 1874, the taking of depositions under the annexed commission was resumed at my office, at 10 o'clock a. m., witness G. H. McDonald being present.

WILLIAM GRAHAM,
Commissioner.

GEORGE H. MCDONALD, of the city and county of Dubuque, State of Iowa, aged thirty-two years and upwards, being duly sworn and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is George H. McDonald.

2. To the second interrogatory he saith: I reside in the city of Dubuque, county of Dubuque, and State of Iowa.

3. To the third interrogatory he saith: I have lived in Dubuque three years.

4. To the fourth interrogatory he saith: I am a wholesale dealer in dry goods.

5. To the fifth interrogatory he saith: I have been in the jobbing business two years; before that I was in the retail business years; I am a partner with Platt Smith, under the firm name of G. H. McDonald & Co.; I am not employed in any capacity by any person, firm, or corporation whatever.

6. To the sixth interrogatory he saith: We do.

7. To the 7th interrogatory he saith: I have; I annex to my answer a specimen of the only card or label, and specimen of ticking which I have in my possession.

8. To the eighth interrogatory he saith: I have become acquainted with two labels, tickets or cards used upon ticking, have on them the

letters A C A; one having on them the letters Amoskeag A C A, and the other Omega A C A Ring Twist; a specimen of the first is attached to this deposition; I have no specimen of the other.

9. To the ninth interrogatory he saith: I have no personal knowledge of the matters inquired of: I purchased the Amoskeag A C A ticking in the market the same as other goods, in the course of my business.

10. To the tenth interrogatory he saith: I believe that the ticking marked Amoskeag A C A, was manufactured by the Amoskeag Manufacturing Company; I have no knowledge or information as to the manufacturers of the Omega A C A Ring Twist.

11. To the eleventh interrogatory he saith: I became acquainted with the Amoskeag A C A ticking, at least five or six years ago; and with the Omega A C A, about two years ago.

12. To the twelfth interrogatory he saith: The reputation of the different tickings which I have mentioned having on them the letters A C A, is distinct and separate as to quality, among those who deal in them in this locality, and with the public and purchasers thereof; the reputation of the Amoskeag A C A is the best; they are quoted from two to five cents higher than the others.

13. To the thirteenth interrogatory he saith: The Amoskeag A C A ticking is superior to the others; it is firmer and heavier than the others.

160 14. To the fourteenth interrogatory he saith: They do not generally describe them as A C A tickings simply, but do sometimes.

15. To the fifteenth interrogatory he saith: They generally describe the article they want by the name of the manufacturer, as well as by the letters A C A; if they want ticking like the specimen annexed to this deposition marked Exhibit A, they would describe it as Amoskeag A C A; if some other ticking, as Omega A C A, or otherwise, as the case might be.

16. To the sixteenth interrogatory he saith: Consumers generally ask for ticking simply; I do not remember that I ever heard any consumer ask for Omega A C A ticking; they do sometimes ask for Amoskeag A C A ticking.

17. To the seventeenth interrogatory he saith: I should expect to find Amoskeag A C A, as that is the most popular brand and the one that is sold the most.

18. To the eighteenth interrogatory he saith: The Amoskeag A C A ticking, and the full label or ticket would be the same as the one upon the specimen attached to this deposition.

19. To the nineteenth interrogatory he saith: No; I have known the ticking, a specimen of which is attached to this deposition as Amoskeag A C A ticking; never knew it as A C A ticking simply.

20. To the twentieth interrogatory he saith: They do not; I never had an order for A C A ticking simply, but always for Amoskeag A C A ticking.

21. To the twenty-first interrogatory he saith: I have sold Amoskeag A C A tickings ever since I have been in business; never sold the Omega A C A or any other A C A ticking except Amoskeag; I believe that the retailer might easily lead his customers to believe that the Omega A C A Ring Twist was the Amoskeag A C A, a specimen of which is attached to this deposition.

22. To the twenty-second interrogatory he saith: I have seen tickings marked as described in the interrogatory; I think that consumers who desired to purchase ticking like the specimen attached to this deposition might readily be lead to believe that the ticking marked Omega

A C A Ring Twist was the same as that marked with the label Amoskeag A C A, but I do not think dealers in the goods would be.

23. To the twenty-third interrogatory he saith: I do not.

Cross-examination:

And the said witness upon his cross-examination deposes:

X 1. To the first cross-interrogatory he saith: Upon my recollection alone; I have no written memoranda.

X 2. To the second cross-interrogatory he saith: I am not agent of anybody; have no arrangement with anybody for selling ticking; I buy in the market for my own firm, and gained the information I possess in this matter in that way. I have never done any business for plaintiffs.

X 3. To the third cross-interrogatory he saith: No; I have given my judgment as to what consumers or purchasers would "intend" or "understand" if buying tickings.

X 4. To the fourth cross-interrogatory he saith: I have said that consumers who desired to purchase ticking like the specimen attached to this deposition might be led to believe that the ticking marked with the card Omega A C A Ring Twist was the same as that of the speci-
161 men mentioned. I think such mistake might occur in almost any locality among persons not familiar with the goods, but not among persons who are dealers in the goods; I have never known any such mistake to occur.

X 5. To the fifth cross-interrogatory he saith: I do not.

G. H. McDONALD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 30th day of May, A. D. 1874.

WILLIAM GRAHAM,
Commissioner.

(Endorsed:) Opened in open court, and filed June 2, 1874.

162 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit. Of April sessions, 1872.

THE AMOSKEAG MANUFACTURING COMPANY
vs.
DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, and EDWARD TRAINER, trading as D. Trainer & Sons. } In equity. No. 32.

The President of the United States to Charles H. Bartlett, esq., Manchester, New Hampshire:

Know ye, that in confidence of your prudence and integrity we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said The Amoskeag Manufacturing Company is complainant, and David Trainer et al. are respondents, to call before you at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you by the said complainants as witnesses in the said action, and then and there to examine them on their respective oath or affirmation on certain interrogatories, hereunto annexed, touching the premises, and to reduce their testimony to writ-

ing; and when you shall have so done, you are to send the same to the said circuit court, closed up, and under your seals plainly and distinctly set, together with this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this tenth day of July, A. D. 1874, and in the ninety-ninth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk of Circuit Court.

The execution of this commission appears in certain schedules hereunto annexed.

CHARLES H. BARTLETT,
Commissioner.

Commissioner's fees, $25.00.

163 United States circuit court.

THE AMOSKEAG MANUFACTURING COMPANY }
v.
DAVID TRAINER ET AL. }

Interrogatories-in-chief sur plaintiffs' rule for a commission to Manchester, New Hampshire.

1. What is your name, and where do you reside, and what is your business? By whom are you employed, and how long have you been engaged in your present business or employment?

2. Is, or is not the Amoskeag Manufacturing Company a corporation duly incorporated by the State of New Hampshire?

3. Please state the extent of your knowledge as to whether or not the Amoskeag Manufacturing Company are, and have been for many years, and how long engaged, and whether extensively or otherwise, in the manufacture of cotton fabrics. If you have a price-list or circular such as is issued to the trade and the public by, or on behalf of the Amoskeag Manufacturing Company, please annex a copy to your answer hereto.

4. Is or is not the said Amoskeag Manufacturing Company now, and has it or has it not, for any and how long a time past, been engaged in the manufacture of ticking, and especially of that known as A C A ticking; if aye, has it been so engaged extensively or otherwise? Please answer fully. At how many general agencies acting for or on behalf of said Amoskeag Manufacturing Company, and at what places located, are the goods manufactured by them, including A C A ticking sold, and how long have those agencies been established?

5. When and where did the Amoskeag Manufacturing Company commence the manufacture of ticking? If you cannot state the precise year, then say whether or not it was prior to the year 1834. Did the Amoskeag Manufacturing Company at any time, and when, introduce any special and what improvement into the manufacture of ticking? Please describe the improvement in manufacture, to which you may refer fully and particularly. When was this improvement introduced? State the year as nearly as you can; if you say that it was in the year 1834, then state in what portion of that year, if you can remember it.

6. If you answer that the Amoskeag Manufacturing Company has been in the manufacture of ticking, then please state how the ticking manufactured by them, and not marked with the letters A C A, has

been marked, and annex to your answers hereto specimens of the ticking (other than that marked with the letters A C A) manufactured by them, with a label upon each such specimen, being in each instance the label which they place upon the same kind of ticking when they offer it for sale.

7. If you have answered that the Amoskeag Manufacturing Company introduced an improvement into the manufacture of ticking, through which they introduced a new and improved article of ticking, then state fully and in detail how they now mark or label the said improved article of ticking—and annex a specimen of said ticking with the label now
164 used thereon by the Amoskeag Manufacturing Company when they offer the same ticking for sale. If there has ever been any change or changes made by the Amoskeag Manufacturing Company in the label or mark originally used by them on the said last-mentioned article of ticking, then (beginning at the first label or mark used), state each and every change which has been made therein, and the time or times, as nearly as you can, of making the same. Annex to your answer a specimen of each of the labels successively used upon said last-mentioned ticking, and mark upon each label so annexed the period during which it was so used.

8. Please state fully and minutely for what purpose and with what intention the letters A C A were originally placed upon and now continue to be used on said last-mentioned article of ticking. Were or were not those letters, in the order in which they occur on said label, originally adopted and used by the said Amoskeag Manufacturing Company, or were they copied or borrowed from some other and what source? Were or were they not adopted, and are or are they not still used to designate to the trade and to the public that the goods upon which they appear, or which may be described as A C A tickings, are of the manufacture of the Amoskeag Manufacturing Company, or were and are they adopted and used merely to designate quality, and without regard to the person or persons, corporation or corporations manufacturing them?

9. Do you or do you not know, and have or have you not, and for how long, known A C A ticking as the distinguishing designation of a certain article of ticking in the market? If so, state, to the extent of your knowledge, what ticking has been and is so designated, and by whom manufactured.

10. Have you seen any of the ticking marked Omega Ring Twist in connection with the letters A C A? Have you examined the same and compared it in quality with that of the Amoskeag Manufacturing Company's A C A ticking? If aye, then state which, if either, is superior to the other, and in what, if in anything, such superiority consists; state the same fully, precisely, and in detail. Please state whether you believe yourself competent (and, if so, upon what you base that belief) to compare the said two articles of ticking and arrive at a correct result as to their relative excellence and quality.

11. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Plaintiffs nominate as commissioner Charles H. Bartlett.

GEO. M. DALLAS,
Per D. S.,
For Plaintiffs.

165 In the circuit court of the United States for the third circuit.
April sessions, 1872.

AMOSKEAG CO. *vs.* TRAINER. } No. 32.

Cross-interrogatories on the part of the defendant to be propounded to witnesses to be examined on the part of the plaintiffs.

1. Upon what do you base you' statement as to the order in which you became acquainted with the different tickets, or the date at which such acquaintance began? If you have any memorandum or written entry from which you testify annex copies thereof.

2. Are you the agent of the Amoskeag Manufacturing Company? What is the nature of the arrangement for selling their goods or otherwise? Is not all the information which you possess in reference to the subject-matter of the interrogatories addressed to you derived from your having been engaged as agent, or otherwise, in the sale of their tickets? If so, state what amount of business you have done for them.

3. State what portion of your knowledge, if any, as to the business or tickings of the Amoskeag Company is based upon information of others, and what has come within your own immediate cognizance. State whether you have been getting information as to these matters recently with a view to any examination.

4. State whether you have any actual knowledge as to the time the Amoskeag Company commenced business, or whether it is only what you have heard. In your examination particularize what you know of your own knowledge to be facts, and what is derived from others?

5. Have you not been aware that the Amoskeag Company had attempted to interfere with the use of the letters A C A years ago, and that the case was decided against them by the courts, and that this is another attempt to get a decision in their favor? Do you know anything, or have you heard of other parties besides the Amoskeag Company using the letters A C A? State who they are and were.

6. Do you know or can you state any matter or thing to the advantage of the defendants in this case? If so, please set forth the same fully and at large in your answer.

True copy.

SAMUEL BELL,
Clerk, &c.

Depositions of witnesses produced, sworn, and examined on the 18th day of November, in the year of our Lord one thousand eight hundred and seventy-four, and continued from day to day, at the office of Charles H. Bartlett, No. 885 Elm street, Manchester, Hillsborough County, New Hampshire, under and by virtue of a commission issued out of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, to me, Chas. H. Bartlett, directed for the examination of witnesses in a certain cause depending in said court, wherein The Amoskeag Manufacturing Company are plaintiffs
166 and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, copartners, trading as D. Trainer & Sons, are defendants.

CHAS. H. BARTLETT,
Commissioner.

WILLIAM P. NEWELL, of Manchester, in the county of Hillsborough, and State of New Hampshire, gentleman, aged sixty-seven years and upwards, being duly sworn and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is William P. Newell; I reside in Manchester, New Hampshire; I am not employed by any one, and have not been in active business for about twelve years; I was formerly a machinist and manufacturer.

2. To the second interrogatory he saith: I understand it to be so.

3. To the third interrogatory he saith: I know that for the period of thirty-seven years last past they have been extensively engaged in the manufacture of cotton fabrics.

I have no price list or circular such as is issued to the trade by the said company.

4. To the fourth interrogatory he saith: To my knowledge it has been engaged in the manufacture of the A C A ticking for the period of thirty-seven years last past; it has been so engaged very extensively; I have no statistics to state the exact volume of business done by them in this line; I have no knowledge as to how many general agencies are employed in the selling of said goods, nor as to how long they have been established.

5. To the fifth interrogatory he saith: I have no knowledge of the matter inquired of; I only know that in the year 1837 they were engaged in the manufacture of tickings, have continued to be so engaged ever since, and were previously, but I cannot say how long, nor where they commenced, from personal knowledge. I have no knowledge of the improvements referred to.

6. To the sixth interrogatory he saith: I have no knowledge of the matter inquired of, except as stated.

7. To the seventh interrogatory he saith: I have no knowledge of the matter inquired of further than already stated.

8. To the eighth interrogatory he saith: I was not acquainted with the manufacture of the A C A tickings at the time the said letters were originally placed upon said goods; but at the time I first became acquainted with them in 1837 the said letters were used, and have since continued to be used, as I understand it, to designate the goods as the best quality of the Amoskeag Manufacturing Co.'s tickings; as to the further matters inquired of I have no knowledge.

9. To the ninth interrogatory he saith: For the last thirty-seven years I have known the A C A tickings as a distinguishing designation of a certain article of ticking in the market; and to the extent of my knowledge the tickings so designated have been the best quality of tickings, manufactured exclusively by the Amoskeag Manufacturing Company.

10. To the tenth interrogatory he saith: I have never seen the tickings marked Omega Ring Twist in connection with the letters A C A, and have no knowledge of the matters inquired of.

11. To the eleventh interrogatory he saith: I do not know any other matter or thing, as I am now aware of, to be stated in answer to this interrogatory.

167 X 1. To the first cross-interrogatory he saith: Upon my recollection solely; I have no memorandum as to the fact.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Company. In 1837 I was employed by said company as agent of the Amoskeag Old Mills, and so continued for eight years, and during that period I had the charge of the superintend-

ence of the manufacture of their A C A tickings; have never acted as selling agent of the same.

X 3. To the third cross-interrogatory he saith: My statement is based upon my own personal knowledge entirely, and I have not been getting information recently as to these matters with a view to this or any examination.

X 4. To the fourth cross-interrogatory he saith: I have no knowledge when the said company commenced business; I know that it was some time prior to 1837.

X 5. To the fifth cross interrogatory he saith: I have not been aware that the said company has attempted to interfere with the use of the letters A C A unsuccessfully or otherwise. I have never heard of any other parties using the letters A C A.

X 6. To the sixth cross-interrogatory he saith: I do not know of any matter or thing to the advantage of the defendants not herein stated.

WM. P. NEWELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 18th day of November, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

CHARLES F. WARREN, of Manchester, in the county of Hillsborough and State of New Hampshire, agent, aged sixty years and upwards, being duly sworn and examined on the part of the plaintiff, saith as follows:

1. To the first interrogatory he saith: My name is Charles F. Warren, and I reside in Manchester, N. H.; my business is agent of the Manchester Gas Co., and have been so engaged for the past nine years; from the fall of 1841 till the spring of 1865 I was employed by the Amoskeag Manufacturing Company.

2. To the second interrogatory he saith: I understand it to be so, but do not know as I ever saw the charter.

3. To the third interrogatory he saith: From 1841 to 1865 I had charge of the cloth-room of the said Amoskeag Company, and during that period it was extensively engaged in the manufacture of cotton fabrics; it was so engaged for some years previous to 1841, but I cannot state how long; it is also so engaged at the present time; I have no circular or price-list to annex.

4. To the fourth interrogatory he saith: When the Old Amoskeag Mills were burned at Amoskeag, the date of which event I cannot fix at this time, the Amoskeag Company commenced at once to prepare for the manufacture of the A C A tickings, at what was then called the Amoskeag New Mills, in Manchester, and manufactured them as soon as the necessary machinery could be supplied and arrangements made, and they were manufactured extensively by said company from that time to the date of my leaving their employ, in 1865. Previous to that time the A C A tickings were manufactured by said company at the Amoskeag Old Mills, so-called, belonging to said company, but for how long a period I cannot state; I cannot state as to the number of agencies, nor when established.

168 5. To the fifth interrogatory he saith: I cannot state when the Amoskeag Company commenced the manufacture of tickings, nor whether it was prior or subsequent to 1834. My first knowledge of their manufacturing tickings was at the Amoskeag Old Mills, at Amoskeag Falls, then in the town of Goffstown, but now a part

of Manchester, N. H.; some time prior to 1841, but I cannot say how long; I cannot state as to the improvements, if any, introduced in the manufacture of tickings; the A C A tickings were an established article of manufacture before my connection with said company, as previously stated, and during my connection with them no change was made in them; I cannot state whether the improvement was made, if any, in 1834 or prior or subsequent thereto.

6. To the sixth interrogatory he saith: During my employment with said Amoskeag Company they manufactured other tickings than A C A, but I have no samples or labels which I can annex.

7. To the seventh interrogatory he saith: I have no knowledge of the matter inquired of not already stated, and have no labels or specimens to annex.

8. To the eighth interrogatory he saith: I have no knowledge of the purpose or intention for which the letters A C A were originally placed upon said tickings, nor whether they were originally adopted by the said Amoskeag Manufacturing Company, or were copied or borrowed. I understand the letters A C A, as used by said company, to designate a certain article of ticking of their manufacture, standing both for the quality of the goods and for the manufacturer.

9. To the ninth interrogatory he saith: For thirty-three years and upwards I have known a certain article of ticking in the market, known as the A C A tickings; said tickings, to the extent of my knowledge, are manufactured by the Amoskeag Manufacturing Company exclusively; I have never seen or known any tickings so designated—manufactured by any other company or person.

10. To the tenth interrogatory he saith: I cannot state in regard to the tickings marked Omega Ring Twist A C A as I have never seen it, and have no knowledge of the matter inquired of.

11. To the eleventh interrogatory he saith: I do not know any matter or thing which I now remember which would be of advantage or benefit to either party, or which is material to this issue, not already stated.

X 1. To the first cross-interrogatory he saith: All my statements are based upon my recollection. I have no memorandum of any matter testified to, nor written entry.

X 2. To the second cross-interrogatory he saith: I am not and never have been agent of the said Amoskeag Company, nor engaged in any way in the sale of their tickings.

X 3. To the third cross-interrogatory he saith: All my knowledge, as herein testified to, has come under my own personal cognizance; I have not made any examination as to these matters recently with a view to any examination.

X 4. To the fourth cross-interrogatory he saith: I have not stated when the Amoskeag Company commenced business; I believe all the facts I have stated are from my personal knowledge.

X 5. To the fifth cross-interrogatory he saith: I do not know and have not heard of the use of the letters A C A by any person or company, except the Amoskeag Company, or of any attempt by said company to interfere therewith, but in one instance. I remember that several years ago a firm by the name of Spear & Ripley undertook to use the letters A C A on tickings manufactured or sold by them, I do not
169 know which. A copy of an injunction obtained by said company restraining the firm of Spear & Ripley from the use of A C A on their tickings was printed in pamphlet form, and a large number were used by said company, a copy being put into each bale of goods of the A C A tickings sold by them for many years afterwards, how long I

cannot say; I do not know, and never heard of any other suit involving that question, by or against said company; I have never known or heard of any other parties, besides the Amoskeag Company, using the letters A C A, except in the case of Spear & Ripley, already stated.

X 6. To the sixth cross-interrogatory he saith: I do not know of any other matter or thing which would be of advantage to the defendants.

CHAS. F. WARREN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 19th day of November, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

STEPHEN D. GREEN, of Manchester, in the county of Hillsborough and State of New Hampshire, gentleman, aged sixty-eight years and upwards, being duly sworn and examined on the part of the plaintiffs, saith as follows:

1. To the first interrogatory he saith: My name is Stephen D. Green; I reside in Manchester, N. H.; I am not in active business, except as to look after my property, tenements, &c.; I am not employed by any one.

2. To the second interrogatory he saith: It is, as I understand.

3. To the third interrogatory he saith: The said corporation was extensively engaged in the manufacture of cotton fabrics from 1836 to 1846, since which time I have not been connected with them, and cannot state from personal knowledge in regard to the inquiry; I have no circular or price list.

4. To the fourth interrogatory he saith: The Amoskeag Manufacturing Company were engaged in the manufacture of A C A tickings from 1836 to the time of the burning of the Amoskeag Old Mills, which I think was in 1840; but I cannot state as to the extent of their business in that line; I was in the employ of said company, spinning the yarn for the A C A tickings during that time; for about a year after the burning of said mills I was not in the employ of said company; at the expiration of a year, or about that time, I cannot state definitely as to the time, I again went into the employ of said company, spinning the yarn for the A C A until I left in 1846; I have no knowledge as to how many general agences sell the Amoskeag Company's goods, nor when established.

5. To the fifth interrogatory he saith: I cannot say when the Amoskeag Company commenced the manufacture of ticking, nor whether it was before or after 1834; I cannot say as to the improvements in the manufacture of tickings introduced by said company, if any; the A C A tickings manufactured by the Amoskeag Manufacturing Company at the time of my connection with them, as previously stated, was a superior quality of tickings, but it was an established line of goods when I first knew them, and I know nothing of any changes since in them; I have no knowledge of the matter inquired of in the last part of this interrogatory.

6. To the sixth interrogatory he saith: I have no knowledge as
170 to how the tickings manufactured by said company, other than the A C A, are marked, and have no labels or specimens of tickings to annex.

7. To the seventh interrogatory he saith: I have no knowedge of any matter inquired of in this interrogatory or any part of it, except as already stated.

8. To the eighth interrogatory he saith: I cannot state as to any mat-

ter inquired of in this interrogatory, as I have no knowledge of any matter therein mentioned.

9. To the ninth interrogatory he saith: I have known A C A tickings as an article of merchandise in the market since 1836; this kind of tickings are manufactured by the Amoskeag Manufacturing Company; I never knew or heard of any A C A tickings manufactured by any one else.

10. To the tenth interrogatory he saith: I have never seen the ticking marked A C A in connection with Omega Ring Twist, and have no knowledge of the matter inquired of.

11. To the eleventh interrogatory he saith: I have no further knowledge upon the subject inquired of in these interrogatories.

X 1. To the first cross-interrogatory he saith: I state from recollection; I have no memorandum or written entry.

X 2. To the second cross interrogatory he saith: I am not the agent of the Amoskeag Company; I have no knowledge of their arrangement for selling goods; my information was not derived while in the capacity of selling agent, never having been such, nor connected in any way therewith.

X 3. To the third cross-interrogatory he saith: My knowledge is based exclusively upon information that has come under my own personal cognizance, and in no part derived from others.

X 4. To the fourth cross interrogatory he saith: I have no actual knowledge when the Amoskeag Company commenced business; all my testimony is based upon my personal knowledge.

X 5. To the fifth cross-interrogatory he saith: I never knew or heard of any suit or controversy between the Amoskeag Manufacturing Company and any other party about the use of the letters A C A; I never heard of any other party or person using the letters A C A.

X 6. To the sixth cross-interrogatory he saith: I cannot state any matter or thing to the advantage of the defendants in this case.

S. D. GREEN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 24th day of November, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

ALLEN PARTRIDGE, of Manchester, New Hampshire, farmer, aged seventy years and upwards, being duly sworn and examined on the part of the plaintiffs, saith:

1. To the first interrogatory he saith: Allen Partridge is my name; I reside at Manchester, N. H.; am farmer now, been so since 1843.

2. To the second interrogatory he saith: It is, I suppose.

3. To the third interrogatory he saith: They have been to my
171 knowledge since about 1828; I don't know as they were incorporated then; but I began to work for a company by that name at Manchester about that time; they have been so engaged extensively; I was in their employ till 1843; have no circular or price list.

4. To the fourth interrogatory he saith: I don't know whether they make them now; they did make them in 1843 when I left them, and had made them for many years previous; I don't know when they first marked them A C A, but think not far from 1830; they manufactured them extensively, but I can't give figures; I have no knowledge as to the agencies which sell their goods.

5. To the fifth interrogatory he saith: At Amoskeag, now Manches-

ter, N. H.; I cannot state the date; as soon as they were incorporated; they began the manufacture of A C A tickings, I should say, as soon as they were incorporated; but they may not have put on that label till a little after; cannot say positively; the improvement which they introduced in the manufacture of tickings, as I understand it, was in making it four-shaded and high-slaied; I should think they made this ticking prior to 1834, but can't state particularly.

6. To the sixth interrogatory he saith: I cannot say as to the other labels; I think they did make other kinds, but can't state particularly; I was employed on the A C A exclusively; have no specimens or labels to annex; I should say I was employed exclusively on the A C A till the "Island Mill" was burned; can't say when that was; after that I had charge of a room in which A C A was made and also sheetings.

7. To the seventh interrogatory he saith: I cannot say how they mark them now; the specimen filed herewith, marked Exhibit B, and identified by me, is the same as they used to make when I worked for them; I adopt the same as part of my deposition; I don't know about any changes in the A C A label.

8. To the eighth interrogatory he saith: My understanding is the letters A C A were put on to designate the tickings as the Amoskeag Company's best; I should say they stood for quality and the manufacturer both; I always understood the letters in that order were some of the company's own getting up.

9. To the ninth interrogatory he saith: I have for forty years and upwards, as I now remember; they have been manufactured exclusively by the Amoskeag Manufacturing Company to the extent of my knowledge.

10. To the tenth interrogatory he saith: I never have, and have no knowledge of the matter inquired of.

11. To the eleventh interrogatory he saith: I know of nothing further.

X 1. To the first cross-interrogatory he saith: I testify from recollection; have no memorandum or written entry.

X 2. To the second cross interrogatory he saith: I am not; don't know about their arrangements for selling goods; never had anything to do with that business.

X 3. To the third cross-interrogatory he saith: None of my knowledge is based upon the information of others; I have not been getting information recently in regard to these matters.

X 4. To the fourth cross-interrogatory he saith: I know from actual knowledge that a company by that name was doing business in what is now Manchester, N. H., as early as 1828; that it was then, or afterwards became, by incorporation, what is now the Amoskeag Manufacturing Company.

172 X 5. To the fifth cross-interrogatory he saith: I have not; I have no knowledge of the matter inquired of; never knew any other party to use the A C A.

To the sixth cross interrogatory he saith: I do not, and cannot.

ALLEN PARTRIDGE.

Examination taken, reduced to writing, and by the witness subscibed and sworn to this 25th day of November, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

PHINEHAS ADAMS, of Manchester, in the county of Hillsborough and

State of New Hampshire, manufacturer, aged sixty years and upwards, being duly sworn, and examined on the part of the plaintiffs, saith:

1. To the first interrogatory he saith: My name is Phinehas Adams, and reside in Manchester, New Hampshire; am cotton manufacturer; am employed by the Stark Manufacturing Company; have been manufacturer forty-six years; am agent.

2. To the second interrogatory he saith: It is.

3. To the third interrogatory he saith: It has been extensively engaged in the manufacture of cotton goods to my personal knowledge since 1829; I have no price list or circular.

4. To the fourth interrogatory he saith: In December, 1846, I took charge of the mill in which A C A tickings were manufactured by the Amoskeag Co., and they have manufactured A C A tickings ever since; it manufactured them prior to that date; but I cannot say how long, nor particularly in regard to it; it was so engaged extensively at the date mentioned, and has been ever since; I cannot answer as to the agencies, as I have no knowledge.

5. To the fifth interrogatory he saith: I cannot say when they commenced the manufacture of tickings, nor whether it was prior or subsequent to 1834; I cannot say as to improvement made by them in the manufacture of tickings, nor whether it was in 1834, or subsequent or prior, if any; the A C A ticking manufactured by them during the time of my connection with them was a superior article of ticking, and the best quality manufactured by them; but its character and quality as an article of manufacture was established prior to my connection with it, and I know of no changes introduced into it.

6. To the sixth interrogatory he saith: The only kinds of ticking manufactured by them with which I am acquainted are the A C A and the A C A seconds, which are sold under the label of Pearl River; have no specimens or labels to annex.

7. To the seventh interrogatory he saith: The sample marked Exhibit B, upon which I have written my name, is their A C A ticking, to which I have referred; but I have no further knowledge of the matter inquired of in this interrogatory.

8. To the eighth interrogatory he saith: I do not know for what purpose they were originally used, nor whether they were original with the company or borrowed; I should say they stood for the manufacturer and the quality; but I have no further knowledge on the subject.

9. To the ninth interrogatory he saith: I have known the A C A
173 ticking as a distinguishing designation of a kind of ticking in the market since 1846; they are of the manufacture of the Amoskeag Manufacturing Company.

10. To the tenth interrogatory he saith: I have never seen the ticking marked Omega Ring Twist in connection with the letters A C A, and have no knowledge of the matter inquired of.

11. To the eleventh interrogatory he saith: I have no further knowledge of the matter inquired of.

X 1. To the first cross interrogatory he saith: My testimony is from recollection only; have no memorandum or written entry.

X 2. To the second cross-interrogatory he saith: I am not agent of the Amoskeag Company; have no personal knowledge of their arrangements for selling goods. My knowledge is not derived from having been engaged in the sale of their tickings; never have been so engaged.

X 3. To the third cross-interrogatory he saith: No part of my knowl-

edge, as testified to in this deposition, was derived from others. I have not been getting information recently with a view to any examination.

X 4. To the fourth cross-interrogatory he saith: I have not stated, and do not know, when the Amoskeag Company commenced business. All my testimony is based on personal knowledge.

X 5. To the fifth cross-interrogatory he saith: I heard some years ago that the Amoskeag Company had a controversy with some party in regard to the use of the A C A, but I never knew how it terminated, and have no further knowledge of the matter inquired of in the first part of this interrogatory. I never knew or heard of any other parties using the letters A C A in this country. I once saw in Montreal a piece of ticking marked A C A, said to have been manufactured in England, but I do not know by whom, and have no further knowledge of the matter.

X 6. To the sixth cross-interrogatory he saith: I do not know and cannot state any matter or thing to the advantage of the defendants in this case.

PHINEHAS ADAMS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 25th day of November, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

PAGE S. GRIFFIN, of Manchester, in the county of Hillsborough and State of New Hampshire, manufacturer, aged fifty-four years and upwards, being duly sworn and examined on the part of the plaintiff, doth state as follows:

1. To the first interrogatory he saith: My name is Page S. Griffin; I reside in Manchester, New Hampshire, and am employed by the Amoskeag Manufacturing Company as second hand in the cloth room; have been engaged in that capacity most of the time since 1840, the year I commenced to work for the company.

2. To the second interrogatory he saith: I so understand it, but don't know as I ever saw the law.

3. To the third interrogatory he saith: They have been engaged in that kind of manufacture very extensively since 1839, to my personal knowledge, and are now so engaged. The company manufac-
174 tured cotton goods before that, but I don't know from my personal knowledge for how long a time. I have no circular or price list.

4. To the fourth interrogatory he saith: I know that the Amoskeag Company has been extensively engaged since 1839 in the manufacture of tickings, especially the A C A. I cannot state the quantity manufactured. My first business for the Amoskeag Company was to bale and mark the A C A tickings, and I continued to do that work until the old Amoskeag Mills were burned. When that was I cannot now state. The same is now done by myself and others in the cloth room where I am employed. I do not know about the agencies for the sale of their goods.

5. To the fifth interrogatory he saith: I cannot state from personal knowledge when and where the Amoskeag Company commenced the manufacture of tickings. Since 1839 they have made them at Manchester, N. H., but I cannot state how it was prior to that. I cannot state about the introduction of the improvements, and have no knowledge on that subject.

6. To the sixth interrogatory he saith: They did manufacture other tickings than the A C A. The other tickings are marked A, B, C, D

and E. The imperfect A C A's are marked Pearl River. They also make other tickings, which are labelled variously, but I can't now say particularly about them. I think on a certain class or grade of tickings labels are put on as requested or desired by the purchasers, and I think the purchasers furnish the labels. I recognize the tickings and labels filed herewith, and marked Exhibit A. They are the ones now manufactured, and the labels now used by the Amoskeag Company. I adopt them as a part of my deposition.

7. To the seventh interrogatory he saith: As I have already said, I do not know about the improvements introduced. The specimens and labels of the A C A, filed herewith, are all I know anything of. They are marked Exhibit B, and identified by my signature thereto, and are correct.

8. To the eighth interrogatory he saith: I cannot say from personal knowledge in regard to anything in this question. I always understood A C A to stand for the Amoskeag best tickings, for the maker and quality.

9. To the ninth interrogatory he saith: I have ever since the year 1839 known the A C A tickings as the distinguishing designation of a certain quality of ticking manufactured exclusively by the Amoskeag Manufacturing Company. Said tickings are of the best quality manufactured by said company.

10. To the tenth interrogatory he saith: I do not know that I have ever seen any ticking marked "Omega Ring Twist A C A," and have no knowledge of the matter inquired of in this interrogatory.

11. To the eleventh interrogatory he saith: I do not know, and cannot set forth any other matter or thing material to this issue or matter in question.

X 1. To the first cross interrogatory he saith: My statements are based upon my recollection exclusively. I have no memorandum or written entry.

X 2. To the second cross-interrogatory he saith: I am not, and have never been, the agent of the Amoskeag Company, but have been in their employ, with the exception of about one year, since 1840.

X 3. To the third cross-interrogatory he saith: All my knowledge is based upon matters which have come under my personal cognizance. I have not been getting information recently as to these matters with a view to this examination.

175 X 4. To the fourth cross-interrogatory he saith: I have no knowledge as to when the Amoskeag Company commenced business; all my testimony is based upon my own knowledge.

X 5. To the fifth cross-interrogatory he saith: I understood that some years ago the said Amoskeag Company had a suit with some one in regard to the use of the letters A C A; but I never had any particular knowledge in regard to the matter, but always understood it was decided in favor of the Amoskeag Company. I never have heard of any other parties using the A C A besides the Amoskeag Company, except the defendants in this case, and the party with whom the said company had the controversy referred to, the name of whom I do not now remember, nor of any other suit by or against them about the A C A.

X 6. To the sixth cross-interrogatory he saith: I do not know, and cannot state any matter or thing to the advantage of the defendants not already stated.

PAGE S. GRIFFIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 1st day of December, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

HENRY A. FARRINGTON, of Manchester, in the county of Hillsborough and State of New Hampshire, manufacturer, aged forty years and upwards, being duly sworn, and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Henry A. Farrington, and I reside in Manchester, N. H. I am employed by the Amoskeag Manufacturing Company, and have been so employed since March 1856.

2. To the second interrogatory he saith: It is, as I understand it.

3. To the third interrogatory he saith: They have been engaged in manufacturing cotton goods to my personal knowledge since 1846, and very extensively. I am not the custodian of their price-lists, and have none to annex.

4. To the fourth interrogatory he saith: The Amoskeag Company are now, and have been to my personal knowledge, engaged in the manufacture of tickings, especially the A C A tickings, since the year 1854; as I understand it, Gardner, Brewer & Co., or the firm doing business under that name, are the only general agents for the sale of the goods manufactured by said company; the headquarters of said agents are in Boston, but they have branch houses in the other principal cities. I cannot say when this agency was established.

5. To the fifth interrogatory he saith: I cannot say when and where the Amoskeag Company commenced the manufacture of tickings; I do not know whether it was prior or subsequent to the year 1834. I cannot say in regard to any improvements introduced in the manufacture of tickings by the Amoskeag Manufacturing Company, and have no information about the matter inquired of; there has been no
176 change made in the standard of their A C A tickings since my acquaintance with them.

6. To the sixth interrogatory he saith: The tickings manufactured by the Amoskeag Manufacturing Company not marked by the letters A C A are marked A, B, C, D, E, and Pearl River; specimens of said labels are hereto annexed, attached to specimens of the tickings upon which they are placed when offered for sale by said company; the foregoing are the company's standard labels; the company attach to other and various kinds of tickings manufactured by them a variety of labels, according to the wish of the purchasers, but the name of the Amoskeag Company does not appear upon this class of goods, and these last-mentioned labels are not regarded as the Amoskeag Company's labels; same are marked Exhibit A.

7. To the seventh interrogatory he saith: I cannot state as to the improvement introduced by the Amoskeag Manufacturing Company in the manufacture of tickings. The best and highest grade of tickings manufactured by the Amoskeag Company are labelled A C A, and have been so labelled since my acquaintance with them; the only change in this A C A label that I remember is changing the words "Amoskeag Falls" to "Manchester"; but I cannot state from memory when that change was made. I will annex specimens of said labels to this deposition, and mark upon them the times during which they were used, so far as I know, and to the best of my recollection, with specimens of the

ticking upon which the same are used; same are filed herewith, marked Exhibit B, and signed by me.

8. To the eighth interrogatory he saith: I do not know of my own knowledge for what purpose and intention the letters A C A were originally placed upon said goods, nor whether the same were copied by said company or were original with them; I understand that since my acquaintance with the use of said letters by the Amoskeag Company, they are and have been used to designate to the trade that the tickings with that label upon them are of a certain standard, and the best quality manufactured by said Amoskeag Company, and as not indicating quality merely.

9. To the ninth interrogatory he saith: I have known for about twenty years last past a certain article of ticking in the market known and designated as the A C A ticking; the ticking so designated, so far as my knowledge goes, is the A C A tickings manufactured by the Amoskeag Manufacturing Company, of Manchester, N. H., and is the best quality of tickings made by them.

10. To the tenth interrogatory he saith: I have seen the ticking marked the Omega Ring Twist in connection with the letters A C A; but have not made such an examination of it as would enable me to make an analysis of its quality as compared with the A C A ticking manufactured by the Amoskeag Manufacturing Company.

11. To the eleventh interrogatory he saith: I do not now recall any fact or circumstance that would be material to the issue or of benefit or advantage to the parties in this case, not already stated.

X 1. To the first cross-interrogatory he saith: My statement is based upon my recollection exclusively. I have no memorandum or written entry.

X 2. To the second cross-interrogatory he saith: I am not the agent of the Amoskeag Manufacturing Co.; I have nothing to do with the arrangements for selling their goods, except to see that they are properly inspected, baled, labelled, &c., and directed to the selling agents; and have no further knowledge of the matter inquired of; my information is not derived from having been engaged or otherwise in the sale of their tickets, but as overseer of their cloth room from 1865
177 to the present time, and as clerk for about eight years previous.

X 3. To the third cross-interrogatory he saith: All my information is based upon my own personal knowledge, and none upon the information of others; I have not been getting information recently with a view to any examination.

X 4. To the fourth cross-interrogatory he saith: I do not know and have not stated when the Amoskeag Manufacturing Company commenced business; I have testified solely from personal knowledge; and none of the facts testified to were derived from others.

X 5. To the fifth cross-interrogatory he saith: I have not been aware that the Amoskeag Company had attempted years ago to interfere with the use of the letters A C A, and that the case was decided against them, nor that this is another attempt to get a decision in their favor; I do not know and have not heard anything about any other person or parties using the letters A C A, except the defendants in this suit.

X 6. To the sixth cross-interrogatory he saith: I do not know any matter or thing to the advantage of the defendants in this case which I have not already stated.

HENRY A. FARRINGTON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 1st day of December, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

EZEKIEL A. STRAW, of Manchester, New Hampshire, manufacturer, aged fifty-four years and upwards, being duly sworn and examined on the part of the plaintiff, doth depose and say as follows:

1. To the first interrogatory he saith: My name is Ezekiel A. Straw; I reside in Manchester, N. H.; am manufacturer; am employed by the Amoskeag Manufacturing Company; have been engaged in my present business since 1856.

2. To the second interrogatory he saith: It is.

3. To the third interrogatory he saith: Since my engagements with the company, more than 36 years ago, they have been extensively engaged in the manufacture of cotton goods; I have a circular or price list, and it is hereto annexed, marked Exhibit C.

4. To the fourth interrogatory he saith: The Amoskeag Company, so far as my knowledge extends, which is back to 1838, have been extensively engaged in the manufacture of tickings, and have always made the kind known as A C A largely; so far as I have any knowledge, the cotton goods manufactured by the company have always been consigned to one selling agent, G. Brewer & Co., Boston, having also an establishment in New York and Philadelphia.

5. To the fifth interrogatory he saith: My knowledge of the Amoskeag Company commenced in 1838; then they were largely engaged in the manufacture of ticking in the Old Mills at Amoskeag Falls, now Manchester, N. H.; I do not know how long they had been previously so engaged; from the time of my connection with the company I have known of no special improvement in the manufacture of tickings; the A C A's were a greatly improved ticking over the other classes of tickings; their improved quality consisted in the fact that they were woven in
178 four shades, thereby enabling the manufacturer to put a larger number of threads into the warp of the goods, and also put a larger number of threads into the filling in the same space, whereby the strength, firmness, and closeness of the fabric was greatly increased; I have no knowledge of any tickings made by any other manufacturer in that way at so early a date.

6. To the sixth interrogatory he saith: The four shaded ticking intended for A C A, which contained any imperfections, was marked "Pearl River" ticking; all their other tickings were woven in three shades, and differed somewhat in width, and are designated variously as A, B, C, D, and E, as shown by the Exhibit A, herewith filed, and I make the same a part of this deposition.

7. To the seventh interrogatory he saith: The improved article, as described in answer to interrogatory fifth, is now made as therein described, and is a four shaded ticking marked A C A, and the label is the same as used in 1838, which was the beginning of my knowledge of the article, with the exception that the words "Manchester, N. H.," have been substituted for "Amoskeag Falls," and the introduction of "A. D. 1836"; I cannot say when the change was made, but think in 1848 or '9, or about that time; the "A. D. 1836" may have been inserted more recently; specimens of the same are herewith filed, marked Exhibit B, and I adopt the same as part of this deposition.

8. To the eighth interrogatory he saith: The letters A C A were used upon this improved article of ticking when I first knew them, and upon

the label as now, so far as I have any knowledge; I believe the letters were adopted originally by the Amoskeag Company, but with what intention they were originally used I cannot say from personal knowledge; their long and exclusive use by the Amoskeag Company upon the ticket or label placed upon this article of ticking, informs the trade and public that the goods marked A C A are the best quality made by them, and so far as my knowledge extends they are and have been used with that intention.

9. To the ninth interrogatory he saith: I have known the A C A ticking as the distinguishing designation of a certain article of ticket, both among merchants and manufacturers, for 36 years; I have never known any person speaking of the A C A ticking to refer to any other ticking than that particular style manufactured by the Amoskeag Manufacturing Company, which is marked A C A, and is a peculiarly organized style of goods, woven in four harnesses (that is four shaded), and which is made by that company in two widths, that is, 32 and 36 inches, and with narrow and wide stripes, as shown by Exhibit B; the wide stripe being composed of twice the number of blue threads as compose the narrow.

10. To the tenth interrogatory he saith: I have seen but one piece of ticking marked Omega Ring Twist A C A; that I have examined and compared closely with the Amoskeag A C A; the Omega ticking appears to be somewhat differently organized from the Amoskeag; it is lighter in weight, the warp composed of a larger number and finer threads than the Amoskeag, the filling being about the same; the Omega tickings weighs about $2\frac{4}{10}$ yards to the pound; the Amoskeag A C A is about $2\frac{1}{10}$ yards per pound; the texture appearance of the Amoskeag A C A is altogether superior to the Omega, while the feel in the hand of the Amoskeag A C A is as though the goods had much more body than the Omega A C A; in the Omega the color of the blue borders altogether too much upon the black to be a good indigo color; the blue stripe in the piece of Omega which I have examined is composed of the same number of threads as the wide stripe of the Amoskeag A C A, but the threads being finer and closer laid brings the stripes nearer together; I consider the Amoskeag A C A as altogether superior for its intended use, or for the market; I consider myself competent to judge of the goods, having been a manufacturer of cotton, both on my own account and for others, for more than twenty years.

179 11. To the eleventh interrogatory he saith: I think of nothing further.

X 1. To the first cross-interrogatory he saith: Upon my recollection.

X 2. To the second cross-interrogatory he saith: I am the manufacturing agent. The Amoskeag Co. have a contract with Gardner Brewer & Co. for the sale of their manufactured goods upon a commission. This firm of merchants, or their predecessors, have sold the Amoskeag Co.'s goods upon a commission since the organization of the company. I have never had any connection whatever with the sale of their goods, except such as was necessary to keep up my knowledge of the state of the market, with reference to the manufacture of the goods.

X 3. To the third cross-interrogatory he saith: The statements I have made are such as have come under my own immediate cognizance. As clerk of the Amoskeag Company I have examined many of the old papers and records of the corporation to ascertain when they commenced the use of the tickets A C A on that special class of goods. All I have found is a letter from Williard Sayles, then the selling agent of the Amoskeag Company, with whose handwriting I am familiar, to a Mr.

Hartshorn, then the manufacturing agent, dated November 26th, 1834, directing Mr. Hartshorn "in future mark all the island ticks A C A on the ticket and on the bale, and invoice them separate, and keep up the highest standard possible as to quality, for we intend them to stand at the head of the tick business, and shall always keep them 2 cents above the A's and 4 cents above the B's." Said letter is hereto annexed and marked Exhibit D.

X 4. To the fourth cross-interrogatory he saith: Everything I have stated as occurring since 1838 is of my own knowledge. If I have stated as to anything occurring prior to that date, it is from documents in my possession as an officer of said corporation.

X 5. To the fifth cross-interrogatory he saith: I know of no attempt to interfere with the use of the letters A C A, which was brought before the courts, except in the case of said company against Spear & Ripley, the decision in which case is understood to be in favor of the company, and which is of course a matter of record. I have heard of parties commencing, or intending to commence, the use of the A C A ticket on cotton goods, but have never known its continued use, and suppose the parties have stopped on the representations of the selling agents of this company, but have no personal knowledge of the parties or the facts.

6. To the sixth cross-interrogatory he saith: I do not and cannot.

E. A. STRAW.

Examination taken, reduced to writing, and by the witness subs'ribed and sworn to, this 2d day of December, 1874, before me.

CHAS. H. BARTLETT,
Commissioner.

MARCH 25*th*, 1874.

EXHIBIT C.

Price list.—Gardner Brewer & Co.

[Cor. Devonshire and Franklin sts., Boston; 62 Leonard street, New York; 246 Chestnut street, Philadelphia.]

180 *Amoskeag Manufacturing Co., Manchester, N. H.*

A. M. Co.			Width.		
46. 80	ACA	Amoskeag ACA ticking	32 in.	25	Less 7½ to 10 per cent.
43. 99	PR	Pearl River "	32 "	23½	
51. 03	ACA ½	Amoskeag ACA "	36 "	30	
46. 77	PR ½	Pearl River "	36 "	27½	
44. 60	A	Amoskeag A "	32 "	21	
42. 48	MT A	Massabesic A "	32 "	20	
40. 18	B	Amoskeag B "	30 "	18	
37. 95	MT B	Massabesic B "	30 "	17	
39. 89	C	Amoskeag C "	30 "	16	
37. 40	MT C	Massabesic C "	30 "	15	
40. 07	D	Amoskeag D "	30 "	14½	
38. 68	MT D	Massabesic D "	30 "	14	
39. 49	E	Amoskeag E "	30 "	13½	
38. 02	MT E	Massabesic E "	30 "	13	
46. 80	ACA AS	Amoskeag A C A awning stripe	32 "	25	
43. 99	PR AS	Pearl River " "	32 "	23½	
45. 36	AS	Amoskeag A " "	32 "	21	
	ASB	" B " "	30 "		
69. 50	G	Amoskeag gingham	28 in.	12½	Less 5 & 2½ per cent.
66. 72	MC G	Massabesic "	28 "	12	
	GG	German "	33 "		
45. 57	D	Amoskeag Denim blue	28 "	22½	

Amoskeag Manufacturing Co., Manchester, N. H.

A. M. Co.			Width.	
42. 53	PRD B	Pearl River Denim blue	28 "	21
47. 39	(D)	Amoskeag " brown	28 "	22[2]
44. 23	PR BD	Pearl River " "	28 "	21
40. 86	B BD	Amoskeag B " "	27 "	17
38. 45	UB BD	Unconoonuc B " "	27 "	16
	8oz. (D)	Amoskeag 8 oz. Denim blue	28 "	
40. 50	8oz. PRD	Pearl River 8 oz. " "	22 "	
new 43. 20 43. 20	(S) L	Amoskeag ⅜ mariners' stripe	27 "	15
new 46. 08 37. 80	(S) D	" ⅜ " "	27 "	16
new 40. 32	MM S	Massabesic ⅜ " "	27 "	14
40. 50 new 43. 20	MM S	" ⅜ " "	27 "	15
45. 23	FS M	Amoskeag fancy shirting	27 "	15
43. 72	FS	Massabesic " "	27 "	14[3]
181	AA F	Amoskeag AA cotton flannel	31 in.	
	MF AA	Massabesic AA " "	31 "	
	PC F	Peoples' choice " "	31 "	
	BB F	Amoskeag BB " "	30 "	
	MF BB	Massabesic BB " "	30 "	
	HD F	Heavy doeskin " "	30 "	
	CC F	Amoskeag CC " "	29 "	
	MF CC	Massabesic CC " "	29 "	
	BF	Buckeye " "	29 "	
	DD F	Amoskeag DD " "	28 "	
	MF DD	Massabesic DD " "	28 "	
	BH F	Boston heavy " "	28 "	
	EE F	Amoskeag EE " "	26½ "	
	MF EE	Massabesic EE " "	26½ "	
	FC F	Forest City " "	26½ "	
	(F)	Amoskeag A " "	22 "	
	F	" B " "	22 "	
	SF	Superior " "	22 "	
	BH FC	Boston colored " "	26 "	
	(A)	Amoskeag A brown sheeting	36 in.	
	(B)	" B " "	36 "	

Less 7½ to 10 per cent.

Amoskeag Manufacturing Co., Manchester, N. H.

A. M. Co.			Width.	
	AA	Amoskeag AA bleached flannel	31 in.	
	FB MF AAB	Massabesic AA " "	31 "	
	PC FB	Peoples' choice " "	31 "	
	BB FB	Amoskeag BB " "	31 "	
	MF BBB	Massabesic BB " "	31 "	
	HD FB	Heavy doeskin " "	31 "	
	CC FB	Amoskeag CC " "		
	MF CCB	Massabesic CC " "		
	BFB	Buckeye " "		
	DD FB	Amoskeag DD " "		
	MF DDB	Massabesic DD " "		
	BH FB	Boston heavy " "		
	EE FB	Amoskeag EE " "		
	MF EEB	Massabesic EE " "		
	FC FB	Forest City " "		
	(F) B	Amoskeag A bleached flannel	28 "	
	FB S	" B " "	28 "	
	FB	Superior " "	28 "	
182] 32. 56	(D)	Amoskeag brown drilling	30 in.	11 net.
34. 00	CD	" C " "	27 "	10 "
32. 30	SD	Superior " "	27 "	9² "
36. 55	D	Amoskeag wide, " "	45 "	17 "
32. 56	D	" bleached "	28 "	11² "
	A D B	" blue "	28 "	
39. 28	Z	Amosk'g Z fine bro. shirting	36 "	8 net.
37. 04	Z	" Z " bleached "	34 "	8 "
45. 97	G	" A " bro. sheeting	40 "	14
45. 09	G	" A " bleached "	37 "	14
44. 92	H	" A " brown "	45 "	15²
43. 30	H	" A " bleached "	42 "	15²
44. 68	K	" A " brown "	49 "	17
44. 32	K	" A " bleached "	46 "	17
47. 06	Y	" A " brown "	60 "	21
46. 75	Y	" A " bleached "	54 "	21
	WS	" " brown "	100 "	
40. 50	WS	" " bleached "	93 "	32²
45. 25	FJ	" " brown jean	30 "	10²
41. 53	FBJ	" " bleached "	28 "	10²
39. 44	FCJ	" " corset "	28 "	10²
28 50	A	Amosk'g seamless bags, 2 bush.		

Less 7½ per cent. Less 7½ to 10 per cent. Less 5 to 7½ per cent.

30 net for small lots, less 5 per cent for others.

Stark Mills, Manchester, N. H.

S. M.		Width.
A	Stark A, brown sheeting	36 in.
B	" B " "	36 "
OK	Ozark " "	36 "
M	Stark M " "	36 "
O	" O " "	36 "
XL	" " "	40 "
LW	" " "	50 "
EW	" " "	61 "
S	" " "	32 "
C	" " shirting	30 "
D	" A " drilling	30 "
OD	Ozark " "	30 "
H	Stark H " "	30 "
HD	" stand'd " "	37 "
K	" A " "	37 "
SD	" shoe " "	37 "
N	" "	37 "
LD	" "	46 "
NWD	" " "	51½ "
WD	" " "	50 "
BH	" heavy " "	28 "
WD		
BD		
A	" A bleached "	28 "
BD		
B	" H " "	28 "
A B		
D	" A blue "	28 "
BH	" H " "	28 "
ACD	" A brown col'd drilling	28 "
L	" heavy leather cloth	50 "
L N	" light " "	50 "
183 S. M. B.		
A	Stark seamless bags, 2 bush	
B	" " " 2½ "	
C	" " " 3 "	
A	" tubes for bags	
OK	Ozark " bags, 2 bush	
SM	Stark half bleached all linen crash	14 in.
AT	" bleached " "	14 "
AT	" half do. " "	14 "
X	" bleached " "	14 "
X		
AT	" half do " "	16 "
16 in.		
AT	" bleached " "	16 "
16 in.		
XX	" half do " "	17 "
XX	" bleached " "	17 "
AA	" half do " "	20 "
AA	" bleached " "	20 "
NTT	" twilled, half bleached all linen crash	17 "
NTT	" " bleached " "	17 "
TT	" " half do " "	20 "
TT	" " bleached " "	20 "
CF	" fancy huckaback cotton and linen	18 "
CF	" " " " bleached	18 "
CF	" " " "	21 "
CF	" " " " bleached	21 "
RBT	" rough bathing towelling	18 "
RBT	" " " " bleached	18 "
RBT	" " " "	21 "
RBT	" " " " bleached	21 "
SM	Stark 8 oz. lion gray duck	29 in.
LD		
LD	" 10 oz. " " "	29 "
10 oz.		
BD	" brown colored "	28 "
IBD	" blue " "	28 "
EH	Eagle gray "	29 "
D		
EH	" brown col'd "	28 "
BD		
EH	" blue "	28 "
IBD		

Stark Mills, Manchester, N. H.

S. M.		Width.
D NN D	Stark double duck	38 in.
D N D	" " "	46
D D	" " "	51½ "
D W D	" " "	56 "

Namaske Mills, Manchester, N. H.

		Width.
NM	Fancy & plain shirting flan'ls	27 "
"	" " " "	29 "
NM	Namaske gingham	22 "
G		
WG	Webster "	22 "
BC	Black coating.	22 "
CS	Cremona suiting	22 "
JS	Japanese "	22 "

184 *Naumkeag Steam Cotton Co., Salem, Mass.*

Pequot.		Width.
A	Pequot A brown sheeting	36 in.
B	" B " "	40 "
W	" W " "	48 "
NSM	" " "	58 "
7-4 Bro.		
9-4 "	" " "	77 "
10-4 "	" " "	86 "
11-4 "	" " "	96 "
C H S	Cohasset " "	36 "
"	" " "	40 "
"	" " "	48 "
C 7-4 Bro.	" " "	58 "
" 9-4 "	" " "	77 "
" 10-4 "	" " "	86 "
" 11-4 "	" " "	96 "
NSM A	Naumkeag A Bro. "	36 "
B	" B " "	40 "
	Bedford " "	36 "
	" " "	40 "
	Belmont " "	36 "
	Hampshire " "	36 "
T 9-4	Naumkeag bro. twilled sheeting	77 "
T 10-4	" " " "	86 "
T 11-4	" " " "	96 "
P 4-4	Pequot 4-4 bleached cotton	37 in.
" 5-4	" 5-4 " "	45 "
" 6-4	" 6-4 " "	54 "

Naumkeag Steam Cotton Co., Salem, Mass.

			Width.
Pequot.			
◇F	8-4	Pequot 8-4 bleached cotton	72 in.
"	9-4	" 9-4 " "	81 "
"	10-4	" 10-4 " "	90 "
◇C	4-4	Cohasset 4-4 " "	37 "
"	5-4	" 5-4 " "	45 "
"	6-4	" 6-4 " "	54 "
"	8-4	" 8-4 " "	72 "
"	9-4	" 9-4 " "	81 "
"	10-4	" 10-4 " "	90 "
NSM		Naumkeag A " "	33 "
A		" " "	37 "
B			
◇T	8-4	" " tw'll'd "	72 "
"	9-4	" " " "	81 "
"	10-4	" " " "	90 "
◇R		London cords, brown	28 "
LC		" bleached	26 "
B			
IC		Italian cloths, brown	29 "
◇4		Naumkeag twills, "	41 "
		" " bleached	38 "
184	SJ	Nanmkeag satteens, brown	28 in.
	STB	" " bleached	26 "
	STC	" " colored	26 "
	STC	" " dyed brown	26 "
	PSJ	Pequot " brown	28 "
◇P	STB	" " bleached	26 "
◇P	STC	" " colored	26 "
	FSJ	Fine imperial " brown	28 "
	HSJ	Heavy " "	28 "
S ◇H B		" " bleached	26 "
S ◇D C		" " colored	26 "
	1HSJ	Improved heavy, brown	28 "
		Belmont standard batting	
		Lincoln "	

Hamilton Woollen Co., Southbridge, Mass.

Tycoon reps
Cashmere reps
Camaieu "
Polonaise "
Mourning "
Scarlet "
Stripes, polkas, etc., etc
Printed alpaca
Niobe " (mourning)
Red Ridinghood ditto (scarlet)
Mousseline de laines
Fancy cassimeres, in large variety
Gentlemen's mauds

} Of the choicest patterns in every variety, new styles constantly being received.

Langdon Manufacturing Co., Manchester, N. H.

L. M. Co.		Width.
(S)X	Langdon fine brown shirting	36 "
(S)X	" " bleached	34 "
X(S)X	" " brown sheeting	40 "
X(S)	" " bleached "	36 "
(S)W	" " brown "	44 "
(S)W	" " bleached "	42 "
E(S)W	" " brown "	48 "
E(S)W	" " bleached "	46 "
(S)	" " colored Silesia rolled	36 "
GB	" G B fine brown sheeting	40 "
GB	" G B " bleached "	36 "
GB	" G B " brown "	36 "
IH	Imperial h'ds, " bleached "	36 "

Salisbury Mills, Amesbury, Mass.

S. M.		Width.
"	Cuban tweeds	27 in.
"	Blue cloths	54 "
"	Brown "	54 "
"	Printed satinets	27 "
"	Fancy shirting flannels	54 "
"	Opera flannels	27 "
"	Gentlemen's shawls	
186 "	Silk Codringtons, Tiger	27 in.
"	" " Napoleon	27 "
"	" " Eagle	27 "
"	" "	54 "
"	Fancy cassimeres, gr't variety	27 "
"	" " "	54 "
"	double and twist cassimeres	27 "
"	Ladies' cloths, water-proof	54 "
"	Repellants, " "	54 "
"	" all wool, " "	54 "
"	Powow River repellants, water-proof	54 "
"	" " " all wool, "	54 "
"	" " ladies' cloths, "	54 "
"	Eugénie cloths	54 "
"	Thibet cloths	54 "
"	Fancy cloakings	54 "
"	Green plaid "	54 "
"	Chinchilla coatings	54 "
"	Elysian "	54 "
"	Fur beaver "	54 "
"	Fancy "	54 "
"	Ulster "	54 "
"	Moutiné "	54 "
"	Black Moscow beavers	54 "

Agents for Amoskeag Manufacturing Co., Stark Mills, Langdon Manufacturing Co., Naumkeag Steam Cotton Co., Hamilton Woollen Co., Salisbury Mills, Namaske Mills.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, complainant, and David Trainer, J. Newell Trainer, William Trainer, and Edward Trainer, co-partners, trading as D. Trainer & Sons, defendants, this circular and price list was produced and shown to Ezekiel A. Straw, and by him deposed unto at the time of the examination as Exhibit C.

E. A. STRAW.

CHAS. H. BARTLETT,
Commissioner.

BOSTON, *Nov. 26th*, 1834.

FRIEND HARTSHORN: I have purchased 18 bales prime upland cotton, at the moderate price of 20 cts. 5 ms., which I now send by st'm'rs, and since the cotton was loaded, am informed by our ag'ts in Charleston, S. C., that they have purchased and shipped 50 bales prime cotton, but do not say what they have paid, but presume not below 17 cts. cash. I hope it will be in by next week for st'm'rs, but if not please inform me what loading to send by st'm'rs. I wish you would in future mark all the Island Ticks A. C. A. on the ticket, and on the bale, and invoice them separate, and keep up the highest standard possible as to q'l'ty, for we intend them to stand at the head of the tick business, and shall always keep them 2 cts. above the A's and 4 cts. above the B's. I send my horse, which I want you to take special charge of yourself; he is a horse I value highly, and want him to come out well in the spring; do by him as you would were the horse your own.

In haste, y'r fr'd,

W. SAYLES.

187 EXHIBIT D.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, complainants, and David Trainer, J. Newell Trainer, William Trainer, and Edward Trainer, co-partners, trading as D. Trainer & Sons, defendants, this letter was produced and shown to Ezekiel A. Straw, and by him deposed unto at the time of the examination as Exhibit D.

E. A. STRAW.

CHAS. H. BARTLETT,
Commissioner.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, co-partners, trading as D. Trainer & Sons, are defendants, these tickings and labels were produced and shown unto Page S. Griffin, Henry A. Farrington, and Ezekiel A Straw, witnesses, and by them deposed unto at the time of the examination. Said tickings and labels are marked Exhibit A.

PAGE S. GRIFFIN.
HENRY A. FARRINGTON.
E. A. STRAW.
CHAS. H. BARTLETT,
Commissioner.

At the execution of a commission for the examination of witnesses, between the Amoskeag Manufacturing Company, plaintiffs, and David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, co-partners, trading as D. Trainer & Sons, are defendants, this ticking and label was produced and shown to Page S. Griffin, Henry A. Farrington, Allen Partridge, Phinehas Adams, and Ezekiel A. Straw, witnesses, and by them deposed unto at the time of the examination. Said ticking and label are marked Exhibit B.

P. S. GRIFFIN.
HENRY A. FARRINGTON.
ALLEN PARTRIDGE.
PHINS. ADAMS.
E. A. STRAW.
CHAS. H. BARTLETT,
Commissioner.

(Endorsed:) Opened in open court and filed January 5, 1875.

188 In the circuit court of the U. S. for the eastern district of Pennsylvania, third circuit. April sessions, 1872. No. 32. In equity.

THE AMOSKEAG MANUFACTURING COMPANY
vs.
DAVID TRAINER, J. NEWLIN TRAINER, AND Edward Trainer, trading as D. Trainer & Sons.

Testimony taken, and exhibits produced before Edward F. Pugh, an examiner appointed by the court in the above entitled cause, at his office, No. 419 Walnut street, Philadelphia, on Tuesday, the twenty-seventh day of April, A. D. 1875, at four o'clock p. m., and thereafter pursuant to adjournments, as noted in the schedule hereto annexed.

All which is respectfully submitted.

EDWARD F. PUGH,
Examiner.

TUESDAY, *April 27th*, 1875, *at 4 o'clock p. m.*

Present, the examiner, Geo. M. Dallas, esq., counsel for complainant; Samuel Dickson, esq., counsel for respondents.

Mr. Dickson states that the omission from the answer of the name of William E. Trainer, one of the defendants, was inadvertent, and that the answer may be considered as that of all the defendants to the bill.

Mr. Dickson admits that the complainants are a corporation duly incorporated under the laws of the State of New Hampshire.

Mr. Dallas requests the examiner to annex to his report, for convenience of reference, printed copy of the testimony taken under several commissioners issued on behalf of the plaintiff. The original of all which testimony and the exhibits thereto are on file.

And the complainants close their testimony.

Mr. Dickson, for the defendants, offers in evidence a set of the labels used by them to designate the several grades of their tickings, viz:

No. 1. Super Extra Omega Bleached Ticking.
No. 2. Omega Medal.
No. 3. Omega A. C. A. Ring Twist.
No. 4. Omega A. Ring Twist.
No. 5. Omega B. Ring Twist.
No. 6. Omega C. Ring Twist.

No. 7. Omega S. Ring Twist.

With the samples of the several goods attached to each respectively.

Mr. Dallas objects to the whole of this offer as irrelevant, with the exception of the label having upon it Omega A. C. A. Ring Twist.

Exhibit marked Respondents' Exhibit No. 1, E. F. P., examiner.

Adjourned until Tuesday next, May 4th, 1875, at 4 o'clock p. m.

FRIDAY, *May 4th*, 1875, *at 4 o'clock p. m.*

Present, the examiner, Mr. Dallas and Mr. Dickson.

J. NEWLIN TRAINER, a witness on behalf of the respondents, being duly sworn, says:

I am one of the defendants; one of the firm of D. Trainer &
189 Sons. I have been connected with the business for nine years as a member of the firm. I worked in the mill about four or five years before that. I remember the fact of the first use by our firm of the letters A C A.

Q. For what purpose were those letters used?

A. To mark a grade of goods, or a quality of goods. We had been marking our goods prior to that A B & C.

Q. How did you come to use the letters A C A?

(Question objected to.)

The plaintiffs property in the mark A C A could not be affected by the motive that induced the use of the same mark subsequently by the defendants.

A. To designate a quality next higher than A. There was another grade of goods then introduced which were considered a higher grade than those marked A. A was then the highest quality.

Q. Since then what other grades have been introduced?

(Objected to as irrelevant.)

A. We have introduced since that the Omega Medal and the Super-extra Omega. The next higher than A C A is the Omega Medal, and the one above that is the Super-extra Omega. This is the highest grade that we make or that we ever did make.

Q. Does this book, marked Defendant's Exhibit No. 1, contain correct specimens of the labels used by your firm; and is each label on the kind of ticking to which it belongs?

A. They are correct specimens, and they are properly placed. The sample of this Super-extra Omega is not quite up to the quality. The blue is not as dark as it should be. It is probably one of the first that we made. I think that I was instrumental in getting up the label A C A.

Q. Had you any knowledge then of the Amoskeag tickings, or their label A C A?

(Objected to upon the ground before stated at length.)

A. To the best of my knowledge, at that time I had not.

Q. Was there any design to imitate the Amoskeag label?

(Objected to as leading.)

A. There was not.

I have frequently seen the Amoskeag goods. There is no similarity in either the goods or the label, except as one class of tickings resembles another. That is, they all have a blue and white stripe. You very seldom see any other tickings except blue and white. There is a difference in the width of the stripes and in the texture of the goods. There is a considerable difference between the twill of our goods and that of the Amoskeag goods. The Amoskeag is a straight twill, and ours is a

herring-bone twill. I think the Amoskeag goods are a little heavier than ours. In quality we don't think they are as good. They are not as smooth; not as sightly; don't look as well. Of the A C A we make two widths, thirty-two and thirty-six inch. I think the Amoskeag A C A ticking is thirty-two inch. I think it is, but am not sure. The large A C A label is at the top of each piece, and there is a small label at the bottom of each piece. I will furnish a specimen. I forget the words on it. The packages contained, when we first began to make these goods, twenty-two pieces. The package was a box. They are now baled in bales of sixteen pieces, with the letters A C A on the face of the bale at one end and the number of the bale or package at the other end. That is all the marking that there is on the outside. The other grades are put up in the same way, and marked on the outside of the bale with the letter of the grade, A, B, or C. All our goods are consigned at the present time to Lewis, Wharton & Co. of Philadelphia, and Lewis Bros. & Co. of New York. When we introduced the A C A we were consigning our goods to Sprague, Colburn & Co. of New York (they are not now in business), and Hazard & Hutchinson, of Philadelphia. All these houses kept and do keep a full assortment of the grades of our goods. Our production of the A C A has not been very large. We make more of the A's. Our production of the Omega goods is a large one.

The first complaint we ever heard from the Amoskeag Co. about the use of the letters A C A was just before the time of bringing suit in this case.

Q. What other manufacturers do you know who make use of the letters A C A?

(Objected to as irrelevant.)

A. There is the Conestoga A C A. They are on tickings. There is also Morristown. They are mentioned in the plaintiffs' testimony. I know that there are others, but I cannot now recall the names. If I had a price-list from some newspaper I might name them.

Adjourned until Tuesday, May 11, 1875, at 4 o'clock p. m.

190 TUESDAY, *May 11th*, 1875, *at 4 o'clock p. m.*

Present, the examiner, Mr. Dallas, Mr. Dickson.

Mr. Dickson offers in evidence a copy of the United States Economist and Dry Goods Reporter, dated Saturday, May 8th, 1875, to show the manner in which the grades of tickings and other dry goods are designated in the trade. Paper marked Respondents' Exhibit No. 2.—E. F. P., Examiner.

Mr. Dallas objects first that the matter offered to be proved is not relevant, and second that the paper offered is not competent.

J. NEWLIN TRAINER resumes his testimony on behalf of respondents.

I think this paper is one of the leading papers in the dry goods trade.

Q. Can you now mention other makers of tickings, of which a particular grade is marked A. C. A.?

A. The Conestoga mills. I don't know that they are now marking their goods A. C. A. They were at the time this suit was brought, but I cannot find any of their goods so marked now.

In addition to the Morristown I mention the Pearl River, the Uncasville and the Eagle.

Q. Can you mention any additional distinction between your goods and the Amoskeag goods?

A. There is a very decided difference in the color of the blue stripe, the color of ours being much deeper.

Cross-examined by Mr. Dallas:

Q. When did you first begin to mark your goods with the letters A. C. A.?

A. About 1867.

Q. How long before that had that firm, of which you about that time became a member, been manufacturing tickings?

A. As a firm we had only been manufacturing tickings for one year.

Q. Whom was the firm then composed of?

A. David Trainer and J. Newlin Trainer.

Q. How long before that had Mr. David Trainer been manufacturing tickings?

A. From fifteen to twenty years. I don't remember exactly the year.

Q. And the firm was formed by your becoming a partner with him?

A. It was.

Q. Up to the time that the firm commenced to use the letters A. C. A. in combination had Mr. David Trainer, or your firm, ever used any letters to indicate quality, other than A. and B. and C. respectively?

A. He had, and we had, as a firm.

Q. Please mention all letters severally, and all combinations of letters so used, prior to the commencement of your use of the letters A. C A. in combination; and the several qualities designated by each of said letters or combinations, respectively.

A. We used A., B. and C., respectively. We also, at one time, used A. A., and also used D. X. L., I think. No other that I can think of.

The A. A. was the same quality as the A., with the exception that the A. A., was at that time wide stripe and the A. was narrow stripe. I cannot at the present time recollect whether the D. X. L. was the same quality as A. C. A. or not. It might have been of a higher quality or it might have been of the same.

Q. When did the use of A. A. cease?

A. I can't remember.

Q. Did it cease before your use of A. C. A. commenced?

A. To the best of my recollection it did not. I can explain why that A. A. was used. At the time the use of the letter A. was made all of our tickings were narrow stripe; then the trade commenced to use wide stripe, and this A. A. was put on the goods to distinguish them from the narrow striped goods A. The goods were the same in all respects, except in the width of the stripe.

Q. Do you still make that same goods with the same width of stripe?

A. We do.

Q. How do you now mark them?

A. We now mark them A.

Q. When did you cease to mark D. X. L.?

191 A. I can't remember when that was.

Q. Was it before you ceased to use the mark A. A.?

A. It is hard for me to answer now.

Q. Did you stop using D. X. L. before you commenced to use A. C. A.?

A. I think we used them both at the same time for a considerable while.

Q. What was the quality or peculiarity of goods designated by D. X. L.?

A. I cannot tell whether they were of a higher or lower grade than the A. C. A.

Q. Would you not remember this fact if D. X. L. had been used after you entered the firm?

A. No; because that might be four or five years; and we may have used both D. X. L. and A. C. A. for only a short time; perhaps only a month. It is impossible for me to tell how long we used them.

Q. Were you a member of the firm when D. X. L. was first used?

A. I do not remember. He may have used it before I was taken into the firm. I mean my father may have used it.

Q. In the papers which you have produced to-day I find, occasionally, the letters D. & T. also D. & T. & F. Please state what those respective combinations stand for.

A. They are put upon goods to designate a grade or quality, I have no doubt.

Q. Does not D. & T. stand for Double and Twist?

A. It may; and that would designate a quality, too. Double and Twist goods would be a grade of goods; a quality of goods.

Q. Do not D. & T. and & F., so combined, stand for Double and Twist and Fulled?

A. Yes. You are in the woolen goods there. That D. & T. & F. might stand for Double and Twist and Fulled, and yet designate a quality, as they certainly would, and do.

Q. You mean, I suppose, that being Double and Twist and Fulled constitutes a quality?

A. I do.

Q. Please state, if you know, either of your own knowledge or on information derived from any of your partners, what the letter D., in your late mark of D. X. L., stood for.

A. I can't tell, without it was put there merely as a matter of fancy. I don't suppose the person who put it there could tell you why it was done any more than he could the A. of the A. C. A.

Q. You have said that you were instrumental in getting up the label A. C. A. for your firm; who first suggested it to your firm?

A. As nearly as I can remember Spencer H. Hazard. I think he was the person who suggested it.

Q. He was then engaged in selling your goods on commission, was he not?

A. I do not remember whether he was then selling the goods on commission or whether he was a salesman in the employ of Sprague, Colburn & Co., of New York.

Q. Was not either the said Hazard, or the firm by which he was then employed as a salesman, engaged in the sale of your tickings on commission?

A. Yes.

Q. Was that suggestion made to you or to Mr. David Trainer, or to both?

A. I do not remember. I suppose to the firm. As he was corresponding with us, of course he always corresponded with us as a firm.

Q. Did you have, or did Mr. David Trainer have, and report to you any verbal discussion of that suggestion with Mr. Hazard?

A. I suppose it would have been natural to have discussed the subject. I don't recollect anything positive.

Q. Can you state the substance, if not precisely, of any such verbal discussion with Mr. Hazard?

A. I cannot.

Q. Can you not remember whether anything passed verbally between Mr. Hazard and yourself as to why the letters A. C. A., in that order, should be used rather than any other letters or combination?

A. I cannot remember.

Q. Can you not remember being told by Mr. David Trainer of any conversation upon that point between himself and Mr. Hazard?

A. I cannot.

Q. Do you not remember the substance of any conversation
192 between yourself and Mr. David Trainer on the subject of the adoption of the letters A. C. A., in that order, rather than any other letters or combination?

A. I answer that in the same way. I cannot.

Q. How many letters did Mr. Hazard write to you in relation to the use or suggested use of A. C. A. by you or your firm?

A. It would be impossible to answer, as we do not preserve our correspondence—our letters.

Q. Do you keep copies of those you write?

A. Letters written upon important subjects we do.

Q. Have you copies of any of those which you wrote to Mr. Hazard upon the subject of the mark A. C. A.?

A. I cannot remember at this time without referring to our letter-books.

Q. Does your firm destroy all the letters it receives?

A. No; we do not. For instance, we preserve an agreement of any kind with any person or firm. Letters of that nature we preserve.

Q. Are you sure that some of the letters of Mr. Hazard which related to this subject did not also include other matters which induced you to preserve them?

A. I am pretty positive, at this present time, that we have not preserved any of Mr. Hazard's letters.

Q. When were those destroyed for which I have been inquiring?

A. I cannot tell at this present time. They may have been destroyed immediately upon their receipt, and they may have been destroyed years afterward.

Q. In your examination in-chief you said that the difference in tickings sometimes consists in the width of the stripes; does that difference exist between those which you mark A. C. A. and the Amoskeag Company's A. C. A.?

A. It does.

Q. Which is the narrow stripe?

A. The Amoskeag.

Q. Do you not know that there are Amoskeag A. C. A.'s of two different widths of stripe?

A. At the time this suit commenced I know that they only made the narrow stripe; but at the present time they may make the same width of stripe that we do.

Cross examination of J. Newlin Trainer continued:

Q. Amongst the manufacturers designated by you as using the letters A. C. A. was the Conestoga Company; is not the mark used by them C. C. A.?

A. I said that the Conestoga Company used the A. C. A. at the time this suit was commenced, but that I didn't know whether they were using it now. I don't believe they are using the mark now.

Q. In the course of your examination you said that some of the A. C. A.'s to which you referred were mentioned in plaintiff's printed testi-

mony, and that you might mention others if you had a price-list before you; please state whether any and which of those you mentioned were known to you independently of that printed testimony, or a price-list, and how known.

A. I wouldn't like to say from memory that I did. All that we generally know on such subjects, and all that we would be likely to know, we get from the price-lists.

Q. Are you, of your own knowledge, able to swear positively that the Uncasville Company mark A. C. A. and not U. C. A.?

A. I should say that I know nothing but what I saw in the price-list.

Q. Upon what does the deeper or less deep shade of the blue stripe in ticking depend?

A. Well, I don't know what you mean by that question.

Q. What makes the blue stripe in ticking more or less deep in the color of the blue?

A. The color of the blue depends upon the less or greater amount of coloring-matter put into it.

Q. What do you mean by the coloring-matter?

A. By the coloring-matter I mean the ingredients necessary to make the color, such as indigo, soda, or potash, lime, &c. Different dyers use different ingredients.

Q. What are the ingredients used in making the blue stripe in the ticking which your firm marks A. C. A.?

Question objected to. The witness is instructed by counsel that he need not answer that question unless he chooses to do so.

A. The answer to this question is the same as that of the question immediately preceding, omitting the word "&c."

193 Q. Have you any knowledge of the Amoskeag A. C. A. goods as they were manufactured in 1853?

A. I have.

Q. Were not those goods then manufactured in herring-bone and wide stripe?

A. I am unable to say at the present time.

Q. Are you able to say that they were not?

A. I am not.

Q. Have they not, from that time hitherto, been partly manufactured of that width and twill? I mean what you have called wide-stripe and herring-bone twill.

A. I cannot tell from memory.

Q. Can you swear that they have not been?

A. I cannot.

Q. Are not the Pearl River tickings manufactured by the Amoskeag Company?

A. I do not know, other than what was stated in plaintiff's book of evidence.

J. NEWLIN TRAINER.

Adjourned till Tuesday next, June 15th, at 4 o'clock p. m.

TUESDAY, *June 15th*, 1875, *at 4 o'clock p. m.*

Present, the examiner.

Adjourned till Tuesday next, June 22d, at 4 o'clock p. m.

TUESDAY, *June 22d*, 1875, *at 4 o'clock p. m.*

Present, the examiner.

Adjourned to meet at the call of the examiner.

TUESDAY, *September 28th*, 1875, *at* 4 *o'clock p. m.*

Present, the examiner, Mr. Dallas, and Mr. Dickson.

Adjourned till Tuesday, October 12th, at 4 o'clock p. m.

TUESDAY, *October 12th*, 1875, *at* 4 *o'clock p. m.*

Present, the examiner, Mr. Dallas, Mr. Dickson, Gruinell Willis, a witness on behalf of respondents.

GRUINELL WILLIS, being duly affirmed, says:

I reside in Germantown; my business is selling dry goods at whole sale. I was Almy & Co., where I went in 1870. When they dissolved, I went with Lewis Brothers. I came to Philadelphia on the tenth of August. Prior to that time I was in New York. They have a house in each city. I had charge of the tickings in the New York house ever since they have had the account; I think, since February 1, 1873. I mean especially the tickings of David Trainer & Sons, known as the Omega Ticks. They are distinguished as follows: The finest grades are called Super-extras, the next, Medals, the next, A. C. A.'s, the next, A., the next, B., the next, C. I am familiar with the tickings of the Amoskeag Company.

Q. From your knowledge of the business, would it be possible for any one of ordinary intelligence and caution, when buying tickings, to mistake the one for the other? Give your reasons for your opinion.

(Question objected to; that the witness' opinion is not admissible, and that the test which the question indicates is not the true one.)

A. I don't think that any persons dealing in tickings would purchase one for the other; first, because the stamp on the goods is entirely different, and, second, because the quality of the goods is such that by their appearance alone, without stamps, one would be able to tell one ticking from the other.

Q. What is the object of manufacturers in affixing letters to the different qualities of their goods?

(Objected that it is not competent for the witness to state the object of manufacturers, and that the general object in the respect inquired of is irrelevant.)

(Question withdrawn.)

Q. What is understood in the trade by the letters used by the Amoskeag Company and the defendants upon their goods?

194 (Objected that it is not competent for the witness to state what is understood by others than himself; nor is his understanding or that of others as inquired for, relevant.)

A. My understanding of the letters used by the Amoskeag Company and the defendants is, that they designate the different grades of the goods as to quality.

Q. So far as you know, are the goods ever ordered by the letters simply?

A. I don't remember to have received an order ever, where the statement or the understanding was not fully expressed that they were Omega ticks. I mean by that, that if a man with whom I had been dealing had been using Omega ticks regularly, and as I had no other tickings for sale, he might have asked for an A C A, which they often do, meaning an Omega A C A.

Q. Do you confine your answer to that grade or do you include all of the grades?

A. I include all of the grades. We were selling no other than the Omega tickings.

Q. Are other letters or combinations of letters used by persons in the trade to designate the different qualities of goods?

(Objected to; that the question as explained, to mean dry goods trade, is irrelevant.)

A. There are numerous combinations of letters used to designate different kinds and qualities of goods. The New York Daily Bulletin of 12th of October, 1875, which I now produce, in its dry goods price-current, furnishes examples.

(Paper marked Exhibit October 12, '75, E. F. P., Examiner, offered in evidence.)

(Mr. Dallas objects to the paper and the witness' remarks concerning it.)

Q. Please state whether the goods of defendants are well known to the trade by their name as Omega tickings.

A. They are.

Cross-examined by Mr. Dallas:

Q. What is the general nature of the business of the firm with whom you have been connected, while selling the tickings you have referred to?

A. They do a wholesale dry goods commission business.

Q. At what place or places?

A. In New York, Philadelphia and Boston.

Q. At which of these places have you been engaged with that firm?

A. Since the formation of the firm to the tenth of August, 1875, in New York. Since then in Philadelphia.

Q. Have you sold these goods in both places?

A. Only in New York.

Q. Did that firm in New York sell these goods otherwise than at wholesale?

A. No.

Q. Did that firm in New York sell these goods otherwise than at wholesale?

A. No.

Q. To what class of purchasers did they sell?

A. To dry goods jobbers.

Q. When you referred to "the trade," in your examination-in-chief, was not then your reference to dry goods jobbers?

A. I should have added, some large retail dealers. My reference to "the trade" was to the dry goods jobbers.

Q. In the dry goods price-current, contained in the newspaper which you have just produced, I find on the list Lawrence X X. Can you tell me what the X X there stands for?

A. They designate a grade of Lawrence goods. I am not familiar with Lawrence goods.

Q. How do you know that?

A. I am not familiar with the Lawrence goods, but judge from the customary way of marking such goods.

Q. What grade does X X customarily indicate?

A. That can hardly be answered; as there are many brands marked X X, which mean different qualities with different manufacturers.

Q. Does it not indicate that the goods so marked are to be taken as of a superior grade to goods marked with a single X?

A. In regard to that I cannot say. It may or may not.

Q. I observe upon this newspaper list no ticking marked A C A, except Amoskeag A C A, and Omega A C A. Can you explain why

A C A, rather than any other combination of letters, is selected to indicate the grade of Omega ticks to which they refer?

195 A. I cannot. The manner of designating different grades of goods rests with the manufacturer.

GRUINELL WILLIS.

TUESDAY, *October 19th*, 1875, *at 4 o'clock p. m.*

Present: The examiner, Mr. Dallas, Mr. Dickson.

Adjourned till Tuesday next, October 26th, 1875, at four o'clock p. m.

TUESDAY, *October 26th*, 1875, *at 4 o'clock p. m.*

Present: The examiner, Mr. Dallas, Mr. Dickson, Mr. George W. Wharton, jr., a witness for respondents.

GEORGE W. WHARTON, JR., being duly affirmed, says:

I am engaged in the dry goods commission business since 1863; the firm being Lewis Boardman and Wharton from 1863 to 1866, and Lewis Wharton and Company from that time to the present. We have been for some years the agents of the defendants, for the sale of their tickings. The different grades of goods are designated by letters or a combination of letters, viz: A C A, and A, and B, and C, and the Medals, and the Super-extras. I am familiar with the goods marked with the Amoskeag brand. The defendants' tickings are known as Omega tickings.

Q. Please state whether the goods of the defendants are so put up and labeled as to resemble in any way those of the plaintiff's?

(Mr. Dallas objects.)

A. I do not think they resemble them in any way, except so far as one ticking resembles another as far as the stripes are concerned.

Q. Would any person in the possession of his senses be likely to mistake the one for the other?

(Mr. Dallas objects.)

A. Well, I don't see how they could mistake the one for the other. They have a different brand.

Q. What is meant by the letters A C A.?

(Objected to.)

A. It is a mark of designation of quality or width.

Q. In your judgment, would tickings be ordered as A C A tickings, any more than A, B, or C tickings?

(Objected to.)

A. They would not.

Book shown witness. Book marked Exhibit 500 (E. F. P., Examiner).

Q. Please look at this book. What is it?

A. This is a weekly price-current for the dry goods trade.

Q. As far as you know, does it give accurately the different brands and grades of goods manufactured in this country, or sold in the New York market?

(Objected to.)

A. I think it is as full a price-list of its kind as I have ever seen.

Mr. Dickson offers the Exhibit 500 in evidence.

Mr. Dallas objects.

Cross-examined by Mr. Dallas:

The jobbers, with some few retailers who do a large retailing and jobbing business, are the customers of our firm.

Q. Had you been selling the Omega ticks of Trainer & Co. prior to the first adoption by them of the letters A C A.?

A. No.

Q. Is the mark "Medal" as used upon their goods, an indication that the goods so marked is of the kind for which, at some time, a medal has been awarded them?

A. I think they adopted "Medal" as designating that quality after they received a medal from the Franklin Institute.

GEO. W. WHARTON, JR.

And thereupon the respondents close their testimony.

196 *Final hearing.*

Now, afterwards, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-six, before the honorable William McKennan, judge of the said circuit court, and the honorable John Cadwalader, district judge, this cause having been brought to a final hearing upon the pleadings and proofs, and the court having heard the argument of George M. Dallas and James E. Gowen, esquires, for complainant, and E. G. Platt and Samuel Dickson, esquires, for defendants, takes the same under consideration.

Decree.

Whereupon, afterwards, to wit, on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and seventy-six—present, honorable William McKennan, circuit judge, and honorable John Cadwalader, district judge—the following proceedings were had, to wit:

AMOSKEAG M'F'G CO. vs. TRAINER ET AL. } No. 32. April sess., 1872.

197 This day came the parties, by their counsel, and the court having considered and being now fully advised upon the matters heretofore submitted herein, it is ordered by the court that the bill of complaint be dismissed with costs.

198 Whereupon, afterwards, to wit, on the sixteenth day of December of the year aforesaid, came again the said complainant, and filed in the clerk's office of said court the affidavit of said complainant and certificate of the court, which said affidavit and certificate are in the words following, to wit:

Affidavit of Amoskeag Man'f'g Co.

In the circuit court of the United States for the third circuit, eastern district of Pennsylvania. In equity.

THE AMOSKEAG MANUFACTURING COMPANY vs. D. TRAINER & SONS. }

William Amory, of Boston, in the State of Massachusetts, being duly

sworn, deposes that he is the president of the Amoskeag Manufacturing Company, which is a corporation duly incorporated by the State of New Hampshire, and which is the plaintiff in the above suit, by which an appeal is taken from the final decree entered therein. That the matter in dispute in the said suit and in the proposed appeal from the
199 final decree therein exceeds the sum or value of five thousand dollars, exclusive of costs; and that the said final decree dismissing plaintiff's bill did, in respect of the refusal thereby to decree an accounting by defendants to plaintiffs, as by the said bill prayed, finally determine (as to said circuit court) a matter in dispute exceeding, as this deponent verily believes, the sum of five thousand dollars, exclusive of costs; and further, that the said final decree did, in respect of the refusal thereby to decree an injunction, as by the said bill prayed, finally determine (as to said circuit court) a matter in dispute exceeding, exclusive of costs, the value of five thousand dollars.

WM. AMORY.

Sworn and subscribed before me this eleventh day of December, 1876, at Boston, in the State of Massachusetts.

WM. S. DEXTER,
Commissioner of U. S. Circuit Court for the Massachusetts.

(Endorsed:) Affidavit of Wm. Amory, prest., that amount in dispute exceeds the sum of $5,000, exclusive of costs. Filed Dec'r 16, 1876.

200 *Certificate of court.*

In the circuit court of the United States for the third circuit, eastern district of Pennsylvania. In equity.

THE AMOSKEAG MANUFACTURING COMPANY }
vs. }
D. TRAINER & SONS. }

I hereby certify that I have judicially ascertained that the matter in dispute in the above suit and involved in the final decree entered therein by the circuit court exceeds, exclusive of costs, the sum or value of five thousand dollars.

Witness my hand this 16th day of December, A. D. 1876.

W. McKENNAN,
Circuit Judge.

(Endorsed:) Certificate of the court that the amount involved in this suit exceeds the value of $5,000, exclusive of costs. Filed December 16, 1876.

201 And the same day came the said complainant, by its solicitor aforesaid, in open court, and presents a petition for an appeal to the Supreme Court of the United States, which said petition is in the words and of the tenor following, to wit:

Petition for an appeal.

In the circuit court of the United States for the third circuit in the eastern district of Pennsylvania. In equity.

THE AMOSKEAG MANUFACTURING COMPANY
against
DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, and EDWARD TRAINER, trading as D. Trainer & Sons.

To the honorable the judges of the said circuit court:

The petition of the Amoskeag Manufacturing Company, plaintiff as above, respectfully represents:

202 That the matter in dispute in the above cause exceeds the sum of five thousand dollars; that they desire to appeal from the final decree rendered in the said cause to the Supreme Court of the United States; and that they pray that the said appeal may be allowed.

[SEAL.] AMOSKEAG M'G CO.,
By WM. AMORY, *President.*

Witnesses to signature of W. Amory—
H. WHITMAN.
J. H. WHITMAN.

GEO. M. DALLAS,
Of Counsel for Appellants.

(Endorsed:) No. 32. Ap'l sess., 1872. Cir. c't U. S., E. D. of Pa. Amoskeag Co. vs. Trainer et al. Appeal. Appeal allowed. W. McKennan, circuit judge. Filed Dec'r 16th, 1876.

203 Whereupon it is ordered by the court that said appeal be, and hereby is, allowed.

And the same day came The Amoskeag Manufacturing Company, complainant, and filed their bond, with Thomas Potter and Edwin A. Johns, of the city of Philadelphia, as sureties, in the penalty of one thousand dollars, conditioned that the said Amoskeag Manufacturing Company, complainant, shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its appeal good; which bond is approved by the circuit judge, and is in the words following, to wit:

Bond.

In the circuit court of the United States for the third circuit, in the eastern district of Pennsylvania. In equity.

THE AMOSKEAG MANUFACTURING COMPANY
against
DAVID TRAINER, J. NEWLIN TRAINER, WILLIAM TRAINER, and EDWARD TRAINER, trading as D. Trainer & Sons.

Know all men by these presents that we, The Amoskeag Manufacturing Company, a corporation incorporated by the State of New Hampshire, and Thomas Potter, of the city of Philadelphia, and Edwin
204 A. Johns, also of said city, are held and firmly bound unto David

Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer & Sons, in the sum of one thousand dollars, to be paid to the said obligees, their executors, administrators, assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this eleventh day of December, anno Domini eighteen hundred and seventy-six.

Whereas the above named, The Amoskeag Manufacturing Company, have appealed from the final decree rendered in the above suit by the circuit court of the United States for the third circuit in the eastern district of Pennsylvania, to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such that if the said Amoskeag Manufacturing Company shall prosecute their appeal with effect, and pay all damages and costs if they fail to make their appeal good, then this obligation shall be void; but otherwise shall
205 remain in full force and virtue.

Sealed and delivered in the presence of—

Attest:
[SEAL.]

WM. AMORY, *Pres't.*
THOMAS POTTER. [SEAL.]
EDWIN A. JOHNS. [SEAL.]

Sealed and delivered by Thomas and Edwin A. Johns, in the presence of us—
C. B. STEWART.
C. W. HUMPHREYS.
E. S. WORRELL.

(Endorsed:) No. 32. April sess., 1872. Cir. ct. U. S., E. D. of Pa. Amoskeag M'f'g Co. vs. Trainer et al. Bond on appeal. Approved. W. McKennan, circuit judge. Filed Dec'r 16th, 1876.

206 *Citation.*

In the circuit court of the United States for the third circuit in the eastern district of Pennsylvania. In equity.

THE AMOSKEAG MANUFACTURING COMPANY
vs.
DAVID TRAINER, J. NEWLIN TRAINER, William Trainer, and Edward Trainer, trading as D. Trainer & Sons.

To David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer & Sons, defendants above named.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1877, pursuant to an appeal taken by the Amoskeag Manufacturing Company, plaintiffs as above, from the final decree rendered by the circuit court in the above case, to show cause, if any, why the said decree should not be corrected, and why speedy justice should not be done to the parties in that behalf.

207 Witness the honorable William McKennan, circuit judge of said

circuit court, this 16th day of December, anno Domini one thousand eight hundred and seventy-six.

W. McKENNAN,
Circuit Judge.

Service accepted.

SAM'L DICKSON,
For Defendants.

208 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the said entitled cause on file and now remaining among the records of the said court in my office, and that the same is a true and correct transcript therefrom, and also a true copy of the bond on appeal and citation.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of these United States the 101st.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

(Indorsement on cover:) No. 341. The Amoskeag Manufacturing Company, appellant, vs. David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer & Sons. E. Pennsylvania C. C. U. S. Filed 27th February, 1877.

No. 112. October Term, 1879.

Supreme Court of the United States.

THE AMOSKEAG MANUFACTURING COMPANY,

APPELLANT.

vs.

D. TRAINER & SONS,

APPELLEES.

APPELLANT'S BRIEF.

Allen, Lane & Scott, Printers, 233 South Fifth Street, Philadelphia.

Supreme Court of the United States.

October Term, 1878. No. 341.

The Amoskeag Manufacturing Company, Appellants,

vs.

David Trainer, J. Newlin Trainer, William Trainer, and Edward Trainer, trading as D. Trainer & Sons, Appellees.

Appeal from decree of the Circuit Court of the United States for the Third Circuit, Eastern District of Pennsylvania, dismissing the Bill of Complaint of the appellants, praying, *inter alia*, that the appellees might be enjoined against violation of appellants' trade-mark "A. C. A."

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

[The answer as filed inadvertently omitted the name of one of the defendants, but it was subsequently agreed that it should stand as the answer of all; and it was

also admitted that the complainants are a corporation under the law of New Hampshire. (1).]

The appellants commenced the manufacture of ticking, in New Hampshire, prior to 1834 ; and in or about that year, they introduced an improvement in its manufacture, which enabled them to produce a very superior article. Prior to the introduction of the improvement just referred to, they had been for some time engaged in the manufacture of ticking, and had marked their products in that species of goods with certain devices, together with the single letter A, or B, or C, or D, to designate the several different grades of excellence of their said goods, but upon the introduction of the improvement in the manufacture of ticking, before-mentioned, they adopted, as a distinctive trade-mark for use upon the article of ticking so manufactured, a label or ticket, of which a *fac simile* is presented at page 15, containing, amongst other things, their corporate name, and the letters "A. C. A." plainly and conspicuously printed in the centre thereof. (2.) This "A. C. A." mark was devised and first adopted by the complainants. This peculiar combination of letters as a mark originated with them, and naturally suggested itself to them as comprising the initial letters of their familiar name "Amoskeag Company," with the addition of the letter "A.," which latter had before been in use as a mark of best quality. This combination of letters was not adopted as a mark of quality merely, but as an appropriate and distinguishing device and trade-mark, to indicate to the public and purchasers that the goods upon which it was

(1.) Record, page 168.

(2.) See paragraph 3 and 4 of Bill, at pages 1 and 2 of printed Record, and evidence of William P. Newell, Charles F. Warren, Stephen D. Green, Allen Partridge, Page S. Griffin, Henry A. Farrington, and Ezekiel A. Straw, printed Record, pages 146 to 149 inclusive.

placed, were of the manufacture of the Amoskeag Manufacturing Company. To adopt the language of some of the witnesses, it was used to designate "The best quality of tickings, manufactured *exclusively* by the Amoskeag Manufacturing Company." (3.) "I understand the letters A. C. A., as used by said company, to designate a certain article of ticking *of their manufacture*, standing both for the quality of the goods *and for the manufacturer*." (4.) "I should say they stood for quality and the *manufacturer, both*." (5.)

The defendants did not use the mark "A. C. A." until "about 1867," thirty-three years after its adoption by the appellants. The defendants fail to explain how they came to select this arbitrary combination of letters. Its selection by the Amoskeag Company has been already explained. The defendants, though a firm composed of several, examined but one of their number as a witness. His account of their first use of this mark was very unsatisfactory. Indeed, he gave no account of it at all, except that it had been suggested by the person who sold their goods on commission, and whose interest to select a mark which would make the goods sell, is manifest; and what that person either wrote or said in making this particular suggestion was, upon cross-examination, inquired for in vain, and the senior member of the appellees' firm, who probably could have explained how they came to adopt so peculiar a mark, if they had been willing to submit the explanation, was not offered as a witness. (6.)

(3.) William P. Newell, page 146 of Record, answer to ninth Interrogatory.

(4.) Charles F. Warren, at page 148 of Record, answer to eighth Interrogatory.

(5.) Allen Partridge, at page 151 of Record, answer to eighth Interrogatory.

(6.) See cross-examination of J. Newlin Trainer, Record, pages 171 to 174 inclusive, and also defendant's witness, Grinnell Willis, at foot of page 176.

The chief contention for the defendants was that "A. C. A." was a mark of *quality, merely;* but the effect of plaintiffs' uncontradicted evidence is that they adopted and used it not to indicate the quality of goods upon which it was placed, but to designate that a certain class of goods upon which they used it was of *their manufacture*, whereas the defendants do not place that mark upon the same class of goods upon which plaintiffs originally placed and still place it; nor do those letters, when used by defendants, denote best quality, for their own evidence is that they manufacture *better* grades, and the one of them who was examined as a witness could not tell whether goods upon which they placed a certain other mark, were or were not of a higher or lower grade than those which they marked "A. C. A." (7.) Moreover, one of defendants' witnesses, when asked in chief, "What is meant by the letters 'A. C. A.?' answered, 'It is a mark or designation of quality *or* width;'" (8.) and the fact is that each of the parties applied "A. C. A." to two different widths.

The appellants' contention is that the appellees adopted this mark of appellants, not by accidental coincidence, nor as a mark of quality merely, for it had no such significance, but in order to introduce their different and inferior—although similar—goods into the market, upon the reputation which the superior character of appellants' fabrics had acquired for that mark.

The appellees also contended that the difference in the form of the label and in the size of the letters would prevent confusion, but, in support of that position, and to show that their use of the mark was not likely to mislead, they examined only two witnesses. One of them was engaged in business, first in New York and

(7.) Record, top of page 172.
(8.) Record, page 177.

then in Philadelphia, in selling dry goods exclusively at wholesale, and the other was engaged in the dry goods commission business, and was the agent of the appellees for the sale of their tickings, having as the customers of his firm only jobbers, and some few retailers who do a large retailing and jobbing business. (9.)

Neither of these witnesses were qualified to speak as to whether intermediate or ultimate purchasers would probably be deceived by the use of the mark "A. C. A." by the appellees, into the belief that the goods so marked were of the manufacture of the appellants. On the other hand, the appellants examined numerous witnesses in several parts of the United States, comprising storekeepers, dealers in and consumers of tickings, who testified very distinctly and positively to the effect that the use of the letters "A. C. A." by the appellees was misleading to purchasers, and injurious to the appellants. Of such witnesses, thirteen were residents of Ohio, sixteen of Illinois, eleven of Missouri, ten of Iowa, and three of Michigan, making fifty-three in all. (10.)

It would unduly lengthen this brief to insert all that might be culled from the testimony of these witnesses to show the misleading tendency of defendants' use of the mark in question; but it is deemed useful to here present the following extracts, although the strength of the evidence upon this point can not be fully appreciated without examining it as a whole.

"William F. Wehrmann, * * * * mattress and bedding manufacturer, * * * * I really could not tell whether any other words or devices are in connection with the letters A. C. A.; these letters are understood by the trade to be the Amoskeag Company's make, * * * * when I buy I simply

(9.) Record, pages 175 to 178, inclusive.

(10.) Record, pages 27 to 140, inclusive.

ask for A. C. A. ticking, and expect Amoskeag for them, and they always give me the Amoskeag ticking without asking any further questions; they always have so far. * * * * I only describe it as A. C. A.; I do not know how retail or any other consumers describe it." (11.)

"Adam Geis, * * * * manufacturer of mattresses and bedding, * * * * simply as A. C. A. ticking; A. C. A. ticking is always called for; they never ask for Amoskeag A. C. A. ticking; Amoskeag is expected when A. C. A. is asked for, * * * * there is no other designation about it except A. C. A. ticking, * * * * A. C. A. is the only designation in common use for this Amoskeag ticking, marked with those letters; I have known of this about fifteen years, * * * * They all designate this, the Amoskeag A. C. A. ticking, as A. C. A. ticking; I am satisfied they have been accustomed to designate it so for fifteen years; further than that my knowledge does not go. * * * * My experience is for fifteen years; I buy it all the time, but make no regular practice of selling it not made up, though I sell whenever any one asks for it; this is not to a great extent; people who do not handle the ticking all the time, and can't tell the quality, would be deceived by another label, and many might be deceived if they found the letters A. C. A.; people do not, except those constantly using it, look further than the letters, and do not generally know the name beyond those letters; if the quality is such that I would expect, and the price the same as I expect, and I myself saw the letters A. C. A., I hardly think I would look further on the label to see if the word Amoskeag or another name was on it. * *

(11.) Record, page 27.

* * Certainly people would and might be deceived, for they would not be apt to scrutinize the name; they would go by the letters A. C. A." (12.)

"George M. Jenkins, * * * * salesman in dry goods store, * * * * I am acquainted with the name of more than one, but not with any other goods than A. C. A. of the Amoskeag; I have been acquainted with others only through price lists; I only remember one other, this is the Omega, therefore I cannot attach any other specimen than the Amoskeag. * * * * If this question refers to wholesale dealers, and buyers of wholesalers, I cannot answer it, never having been employed in a wholesale house; among merchants they would say Amoskeag A. C. A., if they were writing for them, for precaution, but in asking for them verbally they only use 'A. C. A.' in almost every case; most of them don't inquire whether it is Amoskeag or not, they simply say, have you got A. C. A. ticking; that is the way I myself do; it is the way that country merchants do, most of them, especially those coming from Kentucky and Tennessee to buy here; a great many of these merchants come to our house. * * * * The consumers simply say, have you A. C. A. ticking? Most all of them know the letters A. C. A., but do not know any further, and would take any ticking which had A. C. A. on it, without looking at the label. * * * * I do know such letters as the distinguishing characteristic of the A. C. A. made by the Amoskeag Company; I have known it so for six years and a half. * * * * The public and consumers in the retail trade would in almost every case be deceived if the goods had A. C. A. on them, and would not look any further at the label than those letters." (13.)

(12.) Record, pages 32 to 34, inclusive.

(13.) Record, pages 34 to 35, inclusive.

"Simon Straus, * * * * wholesale and retail dry goods dealer. * * * * They do not all ask for the full name; a great many ask A. C. A. alone. * * * * Dealers wanting Amoskeag A. C. A. tick would ask for A. C. A. simply. I do not know very much about other dealers, but I myself ask for A. C. A., expecting Amoskeag A. C. A. I never would take anything else. * * * * Consumers in my store are generally acquainted with the different kinds of ticking, but they often ask for A. C. A. alone; I always do myself, but customers are about divided as to asking for the letters alone, or for the Amoskeag A. C. A. * * * * I do know it as the distinguishing designation, and have so known it for fifteen years; by the Amoskeag Manufacturing Company * * * * We sell a very decent amount; some every day. * * * * Very frequently, in this city, the merchants just tear off the word Omega, leaving the letters A. C. A. alone, and give it to customers wanting Amoskeag. Don't know there is another A. C. A., and they rely on the letters A. C. A. * * * * I have seen both. People who do not understand the trade would be easily deceived." (14.)

"H. August Haarmeyer, * * * * retail dry goods dealer. * * * * I have only known the ticking as the A. C. A., and did not know any but the Amoskeags made them; I have known theirs for years. * * * * If they ask for any particular ticking at all, they ask for A. C. A. simply. * * * * As a general thing, they ask for A. C. A. simply. * * * * Sometimes consumers know the names of different tickings, and they ask for A. C. A. simply, not Amoskeag

(14.) Record, pages 38 to 39, inclusive.

A. C. A. * * * * They would expect Amoskeag A. C. A. in all cases. * * * * I have understood the letters A. C. A. on ticking to be the distinguishing characteristic of the Amoskeag make for fully ten years." (15.)

"Leander S. Gates, * * * * dry goods merchant. * * * * I always call, in purchasing, for the A. C. A. ticking simply. Our customers always, or generally at least, describe them as A. C. A. ticking in calling for them. * * * * I always call for A. C. A. ticking, and our customers generally do the same. I have not known persons acquainted with the brand to describe it differently from the A. C. A. ticking. * * * * Customers call for A. C. A. ticking generally. * * * * I do know, and have known A. C. A. ticking about five years. I have always supposed this ticking was manufactured by the Amoskeag Manufacturing Company, of Manchester, N. H." (16.)

"Joseph Cain, * * * * merchant. * * * * We never bought any other ticking marked A. C. A., but I have seen other ticking marked A. C. A.; the Omega A. C. A. is the only other brand I ever noticed; I forget the other words on the label except Omega A. C. A. * * * * I don't know who manufactures the Omega goods; the Amoskeag, or genuine A. C. A., is manufactured by the Amoskeag Manufacturing Company; that is the only make we recognize as the genuine A. C. A. * * * * I don't recollect of ever having met any other ticking A. C. A., except these two. * * * * The largest portion of our trade order this ticking by the letters A. C. A. ticking simply. * * *

(15.) Record, pages 39 and 40.
(16.) Record, pages 41 and 42.

* If I or merchants in this city should speak of A. C. A. ticking, and wish to purchase A. C. A. ticking, and order it by the simple terms of A. C. A. ticking, we would expect to get the Amoskeag A. C. A. ticking, manufactured by the Amoskeag Manufacturing Company, and we would expect to get ticking like the sample herewith filed, and with a label or mark like the one marked Exhibit A, and filed as part of this deposition. * * * * I have known for seventeen years that A. C. A. ticking designated a certain ticking in the market of a certain brand, and of a certain make; to the extent of my knowledge, the A. C. A. ticking manufactured by the Amoskeag Manufacturing Company has always been designated and distinguished by the letters A. C. A. * * * * For the last seventeen years I know that purchasers, dealers, and consumers of ticking in this locality have been accustomed to designate a certain grade of ticking, of a certain make, made by a certain company, as A. C. A., and this ticking is manufactured by the Amoskeag Manufacturing Company." (17.)

"Abraham Frank * * * * merchant * * * * My customers, when they want the A. C. A. ticking, write for or ask for the A. C. A. ticks, and they don't mention the grade, quality, or maker of the goods, but simply A. C. A. ticks. * * * * These letters have designated a certain ticking known as A. C. A. ticking, and, as I understand, is manufactured by the Amoskeag Manufacturing Company, * * * * for fifteen years altogether, I know that merchants and dealers and purchasers have been accustomed to designate a certain ticking as the A. C. A. ticking. This is the Amoskeag A. C. A. tick, and is manufactured, as I un-

(17.) Record, pages 51 and 52.

derstand, by the Amoskeag Manufacturing Company." (18.)

"Ferdinand Nelke, * * * * dry-goods merchant. * * * * Merchants, dealers, purchasers, and consumers in my locality have for twenty years been accustomed to designate a particular ticking, and which is manufactured by the Amoskeag Manufacturing Company, as A. C. A. ticking, and I have known no other A. C. A. ticking." (19.)

"William Abner Simpson, * * * * dry-goods merchant. * * * * I, and I believe dealers generally, usually designate them as A. C. A. goods; I invariably understand the letters A. C. A. to refer alone to the Amoskeag goods." (20.)

"Charles Gossage, * * * * dry-goods merchant. * * * * The dealers in ticking would probably ask only for the A. C. A. tick, and would not consider he was getting the genuine A. C. A., unless manufactured by the Amoskeag Company. * * * * Persons who deal in ticking, when intending to purchase tickings marked A. C. A., would describe them as A. C. A. ticks, * * * * I—and the custom would be the same with others in this locality—would expect to get the A. C. A. ticking manufactured by the Amoskeag Company, and the full label would be Amoskeag Manufacturing Company A. C. A. * * * * As long as I recollect the brand designated a ticking manufactured by the Amoskeag Company as A. C. A. ticking." (21.)

"Charles L. Luce, * * * * merchant. * * * * I have known A. C. A.

(18.) Record, pages 53, 54, and 55.
(19.) Record, pages 77 and 79.
(20.) Record, page 95.
(21.) Record, pages 104 and 105.

ticking as a distinguishing designation of a certain article of ticking in the market ever since 1850; and the ticking thus designated is that manufactured by the Amoskeag Manufacturing Company. * * * * Merchants and dealers in ticking do generally designate a certain grade of ticking manufactured by the Amoskeag Manufacturing Company as A. C. A. ticking generally; and ticking manufactured by any other company is not so designated to my knowledge. * * * * I have seen both of the labels referred to in this interrogatory, and in my opinion, very many persons would be liable to confound the two, and mistake the Omega for the Amoskeag A. C. A." (22.)

"Herman H. Schulte, * * * * merchant. * * * * Consumers desiring to purchase a kind of ticking like that of which I have annexed a specimen and labeled in the same manner, describe and designate it simply as A. C. A. ticking. * * * * We should expect that manufactured by the Amoskeag Manufacturing Company, and should expect to find upon it a label like the one I have annexed. * * * * It is not unfrequent that consumers come into my store and ask for some A. C. A. ticking, and we understand them to mean that manufactured by the Amoskeag Manufacturing Company, which has upon it a label like the one I have hereto annexed." (23.)

But one more subject need be referred to, in order to place before the court with sufficient fullness, all the facts requisite to an understanding of the case, and of the brief of argument.

An attempt was made by the appellees to show a

(22.) Record, pages 111 and 112.
(23.) Record, pages 115 and 116.

general use, by manufacturers of ticking, of the mark A .C. A., but it wholly failed.

Several of the witnesses had met with or heard of the defendants' piracy, but of no other; and in defendants' and plaintiffs' depositions together, there are mentioned only six other supposed instances of the use of that mark, viz.: "Eagle A. C. A.," (24.) which clearly is a mistake, for the price current which defendants themselves put in evidence, though it mentions three kinds of "Eagle," contains no "Eagle A. C. A." "Uncasville A. C. A.," (24.) which the same price list shows to be *U.* C. A. (25.) "Morristown A. C. A.," (24.) which does not appear on the list, and the evidence upon which J. Newlin Trainer based his testimony as to it, is that the letters A. C. A. were upon a *separate label.* (26.) "Pearl River A. C. A.," (24) which does not appear upon the list in connection with the letters A. C. A., although it does as "Pearl River" simply. Moreover, "Pearl River" is made by the plaintiffs, and it is in proof that they do not put A. C. A. on it. In this also, as in the last instance, the evidence is that A. C. A. (where seen in connection with this goods) was on a *separate label*, (26.) and it is probable that it was fraudulently attached, in both cases, after the goods had been sold to first buyers. "Conestoga A. C. A.," which, on the list, is *C.* C. A. There remains but the "Easton A. C. A.," which appeared upon the list which has been before referred to, viz.: of May 8th, 1875, but not upon the later one [October 1875] which was also put in evidence by defendants.

Defendants produced no samples of any of these alleged additional piracies.

(24.) Record, page 170, testimony of J. Newlin Trainer.

(25.) See the testimony of J. Newlin Trainer (page 174 of Record), where he says, "I know nothing but what I saw on the price list."

(26.) Testimony of C. S. Whisler, in answer to eighth Interrogatory, at page 93 of Record.

Briefly to conclude, the history of the mark in question is, that it originated with the appellants in or about the year 1834, and was adopted by them for use upon a certain class of their goods to designate them as of their manufacture, and it will be contended (in the proper place) that the fact that they used other marks upon other goods manufactured by them, does not invalidate this trade-mark; every manufacturer being entitled (as we will submit) to adopt as many trade-marks for his different products, as he may deem expedient. The appellees began to use the same mark upon goods not the same, but sufficiently similar to deceive, thirty-three years after its original adoption by the appellants; and the appellees so adopted it, not to designate a quality or grade of their goods, but with the intent to deceive purchasers into the belief that the inferior goods which they produced had been produced by the appellants. Purchasers were liable to be, and were in fact so deceived, and the mark "A. C. A." has in fact never been known or used in the trade as a mark of quality, nor has become or been permitted to become open to all manufacturers.

Assignment of the Errors relied upon.

1. The decree is erroneous in that it ordered that the bill of complaint be dismissed.

2. The decree is erroneous in not ordering that the defendants be enjoined and restrained from manufacturing or offering for sale directly or indirectly any ticking other than the plaintiffs', having thereon the letters A. C. A. in the order just set forth.

3. The decree is erroneous in not ordering the defendants to account to the plaintiffs for all the profits which the defendants had made by the sale of ticking having thereon the letters A. C. A. in the order or sequence aforesaid, and for all the profits which the plaintiffs would have made on the sale of their genuine A. C.

A. ticking, but for the wrongful use by the defendants of the plaintiffs' said mark.

4. The decree is erroneous in not sustaining the bill of complaint and granting the prayers thereof, at the cost of the defendants.

BRIEF OF THE ARGUMENT FOR THE APPELLANTS.

This is an appeal from the decree of the court below dismissing a bill in equity, filed by the appellants, to restrain the use by the appellees of a certain alleged trade-mark of the appellants, and for damages.

The trade-mark in question consists of the letters "A. C. A.," as they appear upon the label of the appellants, of which the following is a *fac simile*:—

Of the first adoption and long and continued use of the device in question by the appellants, and of the comparatively recent use of it by the appellees, there is no question. The defense in the court below rested upon two points suggested in the answer—

1. That appellants had lost their right to relief by reason of "laches" and "supineness."

2. That the mark in question is not a trade-mark, but a sign of quality.

I. Upon the question first above stated, it is supposed that but little need be said. There is no proof to support the appellees' contention. The appellants adopted this mark in or about the year 1834, and from that time to the present they have maintained exclusive use of it, and no effort upon the part of others to use it has been shown except in the cases of Spear & Ripley, of the appellees, and of the Easton. As to the latter the evidence is, that the mark appeared during a brief period in 1875, and after this suit had been brought; but there is no evidence that appellants acquiesced in it. Spear & Ripley were enjoined at the suit of the appellants in 1853. The appellees assert that their use of the mark commenced *about* 1867. The appellants, of course, have no means of knowing whether this assertion is correct or not. This suit was brought on May 16th, 1872. It is not likely that the fact of the infringement would come to the knowledge of the appellants immediately, and as the label of the appellees gave no information as to the persons using it, some time would be necessarily consumed in discovering the wrongdoer, as well as in such other inquiries as should precede litigation.

In *Milligan* vs. *Fox*, 3 My. & Cr., 338, there was evidence of user by many other parties during a very long

period, but an injunction was decreed. In *Kinahan* vs. *Bolton*, 15 Irish Ch., 75, there was proof of very numerous advertisements by others, of "L. L." whisky, and of whisky of "L. L." flavor, extending over a period of ten years immediately preceding the suit, but the piracy was enjoined nevertheless.

Delay in obtaining the injunction can do the defendants no injury of which they have a right to complain. *Lee* vs. *Haley*, L. R., 5 Ch., 155. And forbearance to prosecute infringers is not abandonment. Browne on Trade-mark, sections 684 and 685.

In *Cocks* vs. *Chandler*, L. R., 11 Eq., 446, it was shown that a third person had wrongfully used the same name without complaint by plaintiff; "but," said Lord Romilly, "does that justify another person in doing the same thing, or anything like it? If the plaintiff had thought fit, he might have stopped Miller from doing what he did; but I do not think that that amounts to acquiescence which will entitle any other person to do the same."

In *Amoskeag Co.* vs. *Spear*, 2 Sandf., 599 (615), acquiescence, express or implied, if gratuitous, may, it is said, be withdrawn; "it is, in reality, nothing more than a revocable license."

As to what is required to render a mark *publici juris*, see *Ford* vs. *Foster*, L. R., 7 Ch., 611 (623), (625), (628, *et seq.*); *Hirst* vs. *Denham*, L. R., 14 Eq., 542.

"Equity courts will not, in general, refuse an injunction on account of delay in seeking relief, where the proof of infringement is clear, even though the delay may be such as to preclude the party from any right to an account for past profits." *McLean* vs. *Fleming*, 6 Otto, 245.

II. Before discussing the questions of law and of fact raised by the second point, it is proposed to meet the allegation in the answer that the case of *Amoskeag Co.* vs.

Spear & Ripley, 2 Sandf., 599, has finally and absolutely determined the point at issue in this case.

The report in *Sandford*, which is not complete, shows that upon the affidavits attached to "the complaint," showing (*inter alia*) "that the defendants sold their tickings as the real A. C. A. tickings," an *ex parte* injunction was granted, restraining the use upon tickings of any label having thereon the letters "A. C. A.," &c., &c.

The answer *denied* certain essentials of trade-mark, which in this case have been distinctly *proved*, and especially insisted that the letters "A. C. A." were *merely descriptive of quality, and were so generally used and understood.*

On this answer, a motion was made to dissolve the injunction, the plaintiffs reading, in opposition, affidavits that dealers had been deceived, and tending to support the complaint. The motion then was simply to dissolve (on the coming in of an answer, which denied the equity) a *preliminary* injunction, which had been granted *ex parte*, and it was in such position of the matter that Judge Duer (in 1849) said that, "upon the case *as it now stands*, it (the injunction) can not be sustained," &c.

"The court did not decide that the three letters could not be a lawful trade-mark. It decided that the case, *as presented*, did not establish the plaintiffs' right." Browne on Trade-mark, sec. 155.

There is no report of the further proceedings in the case, but the *record*, a certified copy of which was exhibited to the court below, contains the following:—

"It is hereby stipulated and agreed, that this suit be settled upon the following terms:—

"The plaintiffs waive all claim for damages.

"A decree shall be entered for a perpetual injunction against the use of the mark of the plaintiffs, as prayed

for in the complaint, and against the use of the letters A. C. A.

"Each party shall pay their own costs. New York, January 22d, 1853."

(Signed by Counsel.)

And upon the twenty-fourth day of January, 1853, Judge Duer entered a *final* decree, as follows:—

"This action coming on to be heard now on reading and filing the pleadings, and a stipulation signed by the attorneys for the parties, whereby it appears that the plaintiffs waive their claim for damages, and on motion of Martin, Strong, and A. F. Smith for the plaintiffs, It is ordered, adjudged, and decreed, and this court by virtue of the power therein vested, doth order, adjudge, and decree that the defendants Calvin Flint Spear and George B. Ripley, and each of them, and their and each of their attorneys, servants, and agents, be and they are hereby perpetually enjoined and restrained from making, devising, or causing to be made or devised, purchasing or procuring any marks, stamps, labels, or tickets described in the complaint in this action as in use by the defendants upon ticking possessed and sold by them, and that they be in like manner enjoined and restrained from using the said marks, stamps, labels, or tickets upon any tickings whatever in their possession or under their control, or offered or kept for sale by them or on their account or for their benefit. And they be in like manner enjoined and restrained from selling, keeping, or offering for sale any tickings having thereon any such stamp, mark, label, or ticket, and that they be in like manner enjoined and restrained from making, devising, or causing to be made or devised, purchasing or procuring, or in any way or manner using for or upon any ticking whatever, any stamp, mark, label, or ticket similar to the said stamp, mark, label, or ticket of the

plaintiffs, or having thereon the letters A. C. A., or being in any manner an imitation, whether in whole or in part, of the said stamp, mark, label, or ticket of the plaintiffs, and that they be in like manner enjoined and restrained from selling, keeping, or offering for sale any tickings as the real A. C. A. tickings which are not so, and for that purpose from resorting to any device, deceit, fraud, or misrepresentation whatever, by the use of any stamp, mark, label, or ticket, or otherwise, and that they be in like manner enjoined and restrained from in any manner using the letters A. C. A. on goods or on the wrappers or covering thereof.

"And it is further ordered that this decree be made without costs to either party.

"Enter the above.
"J. DUER."

"Consented to:
"D. D. LORD,
"*p.* D. LORD."

It is clear that this record does not support the plea of *res adjudicata*, and the *opinion* of Judge Duer does not conflict with any position which the appellants need maintain.

Now, as to the main question for consideration under the first point. The *facts* as proved, are conclusively opposed to the appellees' theory that the mark in question is a sign of quality merely, and the court is respectfully referred to the statement of the case (see pages 5 to 12 hereof) for references to the evidence upon this subject.

A. C. A. is not an adjective denoting any grade or degree of excellence, and when the appellees entered upon its use, it had not nor has it now acquired, as slang of

the trade, or in any sense, the force of an adjective to denote quality. The appellants originated and first used the mark in or about the year 1834. There is no evidence that it was used by any others until it was attempted to be appropriated by Spear & Ripley, who were enjoined in 1853, and who, it seems, to escape payment of damages, agreed to forego its further use; and since that time, so far from being current in the trade for the purpose of indicating quality, it has been used, as explained upon pages 12 and 13, upon the goods of only a single manufacturer (the Easton) other than the appellants and appellees, and in that single instance, as by the appellees, upon goods, not of the same particular kind as those upon which the appellants originally placed, and still place it, although similar in general character. Besides, the evidence shows only the use of the mark by the Easton in 1875, and apparently but for a very brief period, and there is no ground for assuming that it was used by them prior to the use of it by appellees.

How then can it be believed that the appellees intended truly, and without pretence, simply to indicate the quality of their goods by it? How could it indicate quality when it was not, in any language, by any metaphor, or in any slang, a sign of quality? Who would understand it, since no one could interpret it? What quality did it indicate? That, it would be supposed, of the goods upon which it had been originally placed. But the fact is that appellants did not use it as a sign of quality, or as one in a series of quality marks, at all. For that purpose the single letters A or B or C or D, &c., were used by them in common with others, and are amply sufficient for that object. But *this* mark they place upon a *special kind* of goods, manufactured by a *special process*, whereas the appellees and the Easton did not place it upon goods so manufactured, or of the same peculiar

character, although all of them used it upon ticking; and by their own evidence it appears, not only that the appellees are not able to say how they came to adopt it, but could not tell to what quality they applied the mark. The only one of the appellees who was called as a witness, was asked, upon cross-examination, what the combination "D and T" stands for, and he replied, "They are put upon goods to designate a grade or quality, I have no doubt;" and then being asked, "Does not 'D and T' stand for double and twist?" he answered, "It may, and that would designate a quality too. Double and twist goods would be a grade of goods; a quality of goods." This answer exposes one of the errors which underlie the theory of the defense. There is a palpable distinction between a kind of goods as described by the words "double and twist," and a quality or grade of goods, as signified by the word superior, or by the letter A. The letters D and T stand for double and twist, and A. C. A. for A. C. A. goods. But what *are* A. C. A. goods? The witnesses, both among the manufacturers and the dealers (see statement of the case, pages 5 to 12), reply, goods made by the Amoskeag Company, and of a peculiar kind. Now, inasmuch as these letters, so combined, indicate the manufacturer, they, unlike "D and T," constitute a trade-mark, or trade name, and therefore can not be lawfully employed by any other than the manufacturer who first adopted them, and inasmuch as they also designate the goods as of a particular kind, their use upon any other sort of goods (as by the appellees) is fraudulent, just as to place "D and T" upon any other than double and twist goods would be.

The fact is that the mark "A. C. A." has become an assurance of excellence, as is the case with every valuable trade-mark, which the skill and labor of its rightful proprietor has made so; but in no other sense is that

symbol a mark of quality, and the appropriation of it by appellees, who have contributed nothing but injury to its reputation, is a palpable attempt to reap where they have not sown.

There being no doubt about the fact that appellants were, as long ago as 1834, the designers, and original users of this device, which has long been the distinguishing designation of their goods, the only question is whether, now that it has come to be of great value, it shall transpire that they have been so unfortunate as to have selected a symbol and a name, which equity would not suffer them to appropriate. That there are names which may not be exclusively held, we admit; but that "A. C. A." is one of them, we deny. There can not be supported as trade-marks, mere mechanical adjuncts to the principal thing, as a roll for carpet, or a handle to a bucket; nor the designation of a well-known region, *ex. gr.* "Lackawanna," as the place of production; nor a "mere English word denoting quality," as "nourishing," when applied to stout; nor a sign which has come into general use as an *equivalent* of such an English word, as A., B., C., D., 1., 2., xx., &c. But an arbitrary symbol which, by "people in general," is not understood as having any such meaning, may be adopted, and is to be supported as a trade-mark, as "M. C.," "J. H.;" "B. B. H.," "L. L.;" "303;" "B. S.;" and why not "A. C. A."? * It had, when first adopted, never been a designation of quality, and its exclusive appropriation by one manufacturer is therefore not in derogation of the admitted right of all others to use any word or sign in general use, as a designation of quality. It is an arbitrary symbol, compounded of the initial letters of

* "After a careful examination of authorities," "A. C. A." was, in 1872, admitted to registry as a trade-mark, in the Patent Office, under Act of 1870 (Rev. Statutes, p. 963, sec. 4937, *et seq.*) Browne on Trade-mark, p. 105, sec. 156, and p. 163, sec. 235.

the manufacturer using it, with the letter A added, which latter, *standing alone*, is a mark of quality, to which we agree all are equally entitled. It cannot, however, be reasonably contended, that because one letter, or a portion of the device which goes to make up a trade-mark, might be lawfully used by all the world, that therefore the entire combination which constitutes the mark itself becomes common property. That the name or initials of the name of a manufacturer may become entitled to protection as his trade-mark, has been decided in many cases, and amongst others in *Motley* vs. *Downman*, 3 My. & Cr., 1 ; *Millington* vs. *Fox*, 3 My. & Cr., 338; *Seixo* vs. *Provezende*, L. R., 1 Ch., 192; *Hall* vs. *Barrows*, 4 De G., J. & Sm., 150; *In re Barrows' Trade-marks*, L. R., 5 Ch. Div., 353.

A manufacturer may, without forfeiting his exclusive right to his trade-mark, enhance its reputation by applying it only to such of his goods as, by reason of their being manufactured by a special method, are of peculiar excellence; and if, as a result of this care upon his part, his goods so marked come to be recognised as *most* excellent, it is to him a just advantage which he has fairly earned, and to the public a guard against deception of which they can not lawfully be deprived. In this sense all trade-marks are signs of quality, and it is because they are so that they have become valuable *property* which the law protects, and their infringement a *deceit* which equity forbids. *Singer Co.* vs. *Wilson*, L. R., 3 App. Cas., H. of L., 391.

Crowley invented or introduced a *particular mode* of manufacturing steel. Millington became a partner. Steel *so manufactured* (whether shear, faggot, cast steel, &c. &c.) was distinguished by the mark "Crowley," and afterwards "Crowley Millington;" and the letters "J. H." were introduced into the marks stamped on *double shear* steel by plaintiffs, being the initials of the name of

their principal workman in *that* steel. The answer averred that defendants did not understand that Crowley and Crowley Millington were any other than marks designating particular kinds of steel, such marks having been used generally, if not universally, in the steel trade, nor "that the letters 'J. H.' had any other signification than as being one of the ordinary marks used among steel manufacturers throughout the kingdom for a long course of years."

The Lord Chancellor (Cottenham) said: "There is sufficient to show that they (the marks) were used, in conversation at least, as descriptive of particular qualities of steel;" yet, although he saw no reason to believe that there had been a *fraudulent* use of the plaintiff's marks, and although the plaintiff's conduct had been such that he was not allowed costs, decreed the injunction. 1838.—*Millington* vs. *Fox*, 3 My. & Cr., 338.

Upon a partnership bill, where the contention was that the trade-mark should not be valued against the surviving partner, and the firm had marked all or the chief *part* of their iron, with "B. B. H." the initials of the firm, Lord Westbury again considered the general subject of trade-mark, and said "the name of the first maker may, in time, become a mere *trade-mark or sign of quality*. * * * *Millington* vs. *Fox* affords an example of the manner in which the name of the original manufacturer being branded on the articles made, becomes, in time, a mere indication of quality. * * B. B. H., surmounted by a crown, has become and now is a mere trade-mark or symbol, and is no longer regarded or passes current in the market (if it ever did) as a guarantee or representation that the goods so marked are the manufacture of the original partnership. * * * * The distinction between a name and a trade-mark must be observed. * * * * In fact, there is no evidence that the mark

was ever current or accepted in the market, as a representation of the person who manufactured, or of the place of manufacture, or otherwise than as a brand of quality. * * * * I am of opinion that these initial letters, surmounted by a crown, have become and are a trade-mark, properly so called, THAT is, *a brand which has reputation and currency in the market as a well-known sign of quality.*" The Chancellor concluded by holding the trade-mark, B. B. H. and a crown, to be *property* of the partnership, and said "imposition on the public is indeed necessary for the plaintiff's title, but in this way only, that it is the *test* of the invasion by the defendant of the plaintiff's right of property." 1863.—*Hall* vs. *Barrows*, 4 De G., J. & S., 150.

Plaintiffs had "originated and adopted a method of preparing whisky, whereby the *quality is improved, and a peculiar flavor imparted.*" It was marked "L. L.," in consequence of the "L"ord "L"ieutenant's extensive patronage. "Whisky *so prepared* became known to the trade and public as 'L. L. Whisky,' and it acquired a high reputation."

Respondent alleged that he had publicly used those letters for ten years, and gave proof of advertisements made by him ten years before suit, eleven of "L. L. Whisky," twelve of "Whisky of L. L. flavor," and numerous advertisements of same character, continuously until about date of bill. "He denied that the letters L. L. had been used as a trade-mark, alleging that "Kinahan's L. L." had always been the mark used, and that "*the letters L. L. were only descriptive of the quality of whisky.*"

Respondent's counsel made substantially the same arguments as to the mark being one of quality merely ("like X. X. on porter") and as to lapse of time, that are made by counsel for defendant in this case.

The Lord Chancellor (Brady) granted the injunction,

and an account of all sales, and ordered that the respondent must pay all the costs of the suit, and said, "That this was a trade-mark in the strictest sense, there can be no doubt whatever." * * * *

"This whisky, under that name of L. L., is a well-known article of commerce; that it has no other name than L. L.; that under this name it has acquired an especial reputation, and that for the long period of forty years, this name has been applied to it. What is a trade-mark more than that? It is proved that these two letters designate this whisky. The letters of themselves mean nothing; no one *a priori* could know the meaning of such a trade-mark; it is merely like a diamond, an anchor, or a crown stamped on any article—the mark by which the vender enables the public to recognize his wares."

"There can be no doubt, and indeed it was not disputed, that two letters may constitute a trade-mark." 1863.—*Kinahan* vs. *Bolton*, 15 Irish Ch., 75.

"Anatolia" is the designation of a tract of country wherein liquorice-root is largely grown, yet (under the circumstances of the case) it was sustained as a trade-mark. It was applied by the original user only to a *particular description* of liquorice. Property in a word (said Lord Westbury) as applied by way of stamp upon a particular vendible article, "does exist the moment the article goes into the market so stamped, and there obtains acceptance and reputation, whereby the stamp gets currency as an indication of *superior quality*, or of some other circumstance which renders the article so stamped acceptable to the public."

The following language of the Lord Chancellor is especially applicable to the present case: "They initiated the mark in order that their own manufacture, stamped with the mark, might come into the market, and plainly, as they must have known, for the purpose of competing

with the article so marked which previously was there. The fact of the adoption of the stamp by the defendants is itself pregnant with proof of their estimate of the desirableness of so stamping their liquorice; and they henceforth used the adopted stamp in the place of those which they had previously used. Their reason for so doing is clearly to be collected from the letter which led them to adopt it.

"It is impossible to say that a case so circumstanced has not all the elements of a case which requires the interposition of this court. There is the deliberate imitation of a mark previously existing in the market. The thing is done in order that the rival article of the defendants' manufacture may be brought into the market in competition with that which is already there. There is nothing, in a word, which is necessary for the interposition of the court which is wanting on the present occasion." 1864.—*McAndrew* vs. *Bassett*, 4 De G., J. & S., 380.

"Eureka" was adopted as the name of a *particular shape* of shirt, by Ford, who marked them "R. Ford's Eureka Shirt, London." Upon defendant's undertaking not to apply the word Eureka, except by the use of the words "Foster, Porter & Company's Improved Eureka," the Vice-Chancellor ordered the motion for injunction to stand to the hearing, without prejudice. This order was taken, by appeal, to Giffard, L. J., who, in striking out the undertaking, said: "I cannot but think that, supposing a person sees the term 'Eureka,' whether in conjunction with the name 'Ford's' or the word 'Improved,' or the words 'Foster, Porter & Co.'s Improved,' *he would not take the least notice whether it was Ford's, or Foster and Porter's, or any one's else.*"

"The general effect of the evidence adduced by the defendants was that the name '*Eureka*' was of common use in the shirt trade, as applying to shirts of a particu-

lar shape, but without reference to any particular maker, and that in a few instances it was used in the price or trade lists of manufacturers of shirts."

The Vice-Chancellor (Bacon) dismissed the bill with costs, and upon the ground that the word "Eureka," separated from Ford's name, was not his trade-mark, that it was the name of a kind of shirt, which the whole trade had a right to use; and such was the tenor of the argument for the respondents upon the appeal.

But the appellate court said: (James, L. J.) "I am of opinion, therefore, that having determined the legal right which he has established to be in him, he is entitled to the ancillary equitable remedy, that he is entitled to an injunction, very much in the same terms as that which was granted in *Millington* vs. *Fox*, 3 My. & Cr., 338, an injunction to restrain the defendants from using the word 'Eureka,' or any other *part* of the trade-mark of plaintiff to any shirts manufactured by them, or to any shirts sold by them, unless such shirts were manufactured by the plaintiff, and from issuing boxes, cards, or labels on which the mark 'Eureka' shall be applied to shirts not of the plaintiff's manufacture."

And further: (*per* Mellish, L. J.) "I am of opinion that the Lord Justice *Giffard*, in those expressions, very correctly described the two questions which have to be decided in this case; and I think the mode in which he expressed himself as to the word 'Eureka' proves that he did not concur in the opinion which the Vice-Chancellor had given, that because Mr. *Ford* always put his own name before the word 'Eureka,' therefore he could not be entitled to the word '*Eureka*' as his trade-mark, and that he could have no protection against anybody who used it unless that person also used the name of *Ford*. For the reasons given by the Lord Justice *James*, which I do not repeat, I am clearly of opinion that originally, at any rate, the plaintiff was entitled to be protected

against the use of the word '*Eureka*' by the shirt makers as a violation of his trade-mark." * * * *

"Then, no doubt, it is said that he always put '*Ford's Eureka Shirt*,' and that would prevent the public being deceived. I can not think that that would be its practical effect. It is quite obvious that, although he puts the word '*Ford*' to it for the purpose of inducing people to come to him, yet a very large number of persons who read these advertisements would be attracted by and would remember the word '*Eureka*' who would wholly forget the word '*Ford*.' And persons who had been accustomed to buy these shirts marked '*Ford's Eureka Shirts*,' and persons who had been accustomed to read his advertisements and see that the shirts were extensively advertised as '*Ford's Eureka Shirts*;' when they came and saw in a shop, either in this country or in the colonies, shirts marked as the defendant's shirts are marked, '*The Eureka Shirt*,' they would not necessarily remember the name of '*Ford*, but they would suppose that these were the advertised shirts which had obtained such celebrity. There can be no doubt that there are many persons who, if there were no difference as regards the fit of two shirts, would prefer buying a shirt from the original maker, and the word '*Eureka*' marked upon a shirt would be calculated to make such persons believe that it was made by the man who originally found out and advertised the '*Eureka*.' I am, therefore, of opinion on the first point, that the trade-mark has not been made so *publici juris* as to debar the plaintiff from maintaining his suit." 1872.—*Ford* vs. *Foster*, L. R., 7 Ch., 611.

Plaintiff was the manufacturer of certain "patterns of cloth," to the several varieties of which he had applied "fancy names," and cloths thus designated were known as his, and of "a superior quality." The defense was that the names merely described the patterns—to which

plaintiff had no exclusive property—and were *publici juris*. It was testified that the names were known in the trade and had been in growing use for some years, and that it was well known that other persons besides plaintiffs were makers of such cloths, and that plaintiffs' claim was "quite inconsistent with the general practice and known usage of such trade."

Vice-Chancellor Bacon, in granting the injunction, referred to the fact that plaintiffs had invented the patterns, and called each of them by "a new distinctive appellative," and remarked that "the tailor or other retail dealer who, having become acquainted with the *name* and *quality* of the plaintiff's cloths, and desiring further supplies of the same and no other—if he goes to the merchant and *asks* for what he wants *by the only name he knows of* * * * * would unquestionably be liable to be disappointed and deceived." 1872.—*Hirst* vs. *Denham*, L. R., 14 Eq., 542.

The word "Excelsior" has been maintained as a trade-mark against a claim of right to use it as a designation of quality. *Braham* vs. *Bustard*, 1 H. & M., 447.

The question being as to right to registry of certain trade-marks under the English statute,

Malins, V. C., said, * * * * "Now, if before the passing of the act of 1875, this case had come before the court on an application by Messrs. *Barrows & Sons*, to restrain some other trader from making iron with the mark B. B. H. *Bloomfield* Extra Treble Best, the whole of those words would constitute the trade-mark, and although Extra Treble Best by itself would be nothing, the combinntion of B. B. H. *Bloomfield* Extra Treble Best becomes a trade-mark. So, in the same manner, would be B. B. H. with the crown. The horse-shoe by itself would be nothing, but B. B. H. with the horse-shoe has been used for many years as a trade-mark. Just so in *Raggett* vs. *Findlater*, Law Rep.,

17 Eq., 29, 'Blockley's Nourishing Stout' is a trade-mark which *Findlater* would have been restrained from using. Therefore, I agree with Mr. *Rigby*, that so far as the words claimed are descriptive of quality, they can not be trade-marks, but when they are combined with initials of the firm or the name of the works at which the iron is made, the whole combination constitutes one trade-mark."

And on appeal, Jessel, M. R., said: "It appears to me that the proper mode of registering the trade-mark in such a case as the present, is as follows:—

"Register B. B. H., used either alone or in combination with a crown or with a horse-shoe, or with a crown and horse-shoe, or with any other mark, device, or words signifying the quality of the iron. The marks 'Bloomfield' and 'Bloom' would be registered in the same way." *In re Barrows' Trade-marks*, L. R., 5 Ch. Div., page 353.

In *Siegert* vs. *Findlater*, L. R., 7 Ch. Div., 801, a defendant, who was the *first* to place the word *Angostura* upon bitters not the same as certain bitters of the plaintiff, which had previously *come to be known* as "Angostura Bitters," was enjoined; although the defendant put his name on the same wrapper, and "Angostura" was the original name of the place of manufacture; and it was contended that "the fact that the plaintiffs are the sole makers of a particular article does not give them a monopoly of anything else which may be properly described by the same name as that by which their article has become known;" but *Fry*, J., remarked, "When you add the fact that the plaintiffs were the sole manufacturers of the article, it is clear that the public meant the plaintiffs' bitters, though this was not actually present to the mind of the purchaser."

In the Glenfield Starch case, the complainants called their product Glenfield starch. The respondent set up

that Glenfield was the place where he resided and made his starch, and where the complainants had formerly made theirs, but not at the time of complaint; but the court enjoined respondent's use of the word Glenfield. *Witherspoon* vs. *Currie*, L. R., 5 H. L., 508.

But the English courts have by no means overlooked the admitted principle that a well-understood designation of quality cannot be made a trade-mark. That doctrine is, with sound discrimination, distinctly recognized and properly invoked in a case where the effort was to establish exclusive property in the word "nourishing" as applied to stout, in which Vice-Chancellor Malins, who, in the subsequent case of *Barrows' Trade-marks*, L. R., 5 Ch., 353, refers to this case, and calls attention to the distinction, said:—

"Upon principle it appears to me, there must be something to go beyond a mere English adjective, describing the quality of the material. If you use a foreign word, or a word in a dead language not known to people in general, that word itself, because it is not understood, may very reasonably become a trade-mark. Therefore it was that, in the case of *McAndrew* vs. *Bassett*, 4 De G., J. & S., 380, the word 'Anatolia' was held to be a good trade-mark, although 'Anatolia' describes a district of Asia Minor, but that was so utterly unknown to the great bulk of the community, that it was not unreasonable to say that those who first used the word 'Anatolia' and made it a trade-mark, thereby acquired the exclusive right to use it." * * * "The fact of its being put in three languages, all foreign languages, constituted the trade-mark in that case." * * * * "A fanciful word, not understood by the public, you may have the exclusive right to use, because it will become a trade-mark. 'Excelsior' is a Latin word which would be understood by few of the public, and does not and could not describe quality. It

is a fanciful word which the owner chooses to adopt." * * * * "My opinion is, that, for the protection of the public, it is necessary a trade-mark should be something beyond *a mere English word* denoting quality." 1871.—*Raggett* vs. *Findlater*, L. R., 17 Eq., 29.

In the court below the case of *The Singer Manufacturing Company* vs. *Wilson*, as reported in L. R., 2 Ch. Div., 434, was cited on behalf of the appellees. Pending this appeal the order in that case has been reversed. *Singer Manufacturing Company* vs. *Wilson*, L. R., 3 Appeal Cases, H. of L., 377. We respectfully submit that this case is, in several particulars, especially in point. The Lord Chancellor (Cairns) says: "If the term a *Singer* or *Singer's* machine *denotes to the mind of the public, or of those likely to purchase such articles*, not a particular type or shape or arrangement of parts of the machine, but a machine the manufacture of a particular person or firm; and if the defendant, whose name is not Singer, represents his machines as being Singer or Singer's machines, there is at least a case which calls upon the defendant to show some reason which would justify him in thus making use of the name which is not his own, but which is the name, and is known to indicate, the manufacture of the plaintiffs." And after stating that "the object of the defendant has been to bring the case within the authority of some well-known cases decided in the Court of Chancery, in which it has been held—but always upon the evidence in each case—that a proper name applied to a patented or other article *may come to be* the name of the article, and not a mark or sign indicating the manufacture;" and after referring to the evidence in the case, which appears to have been very similar to that in the present case, the Chancellor said: "If, therefore, I were obliged to decide this case upon the issue thus raised, and as it seems to me properly raised by the pleadings and upon the whole of the evi-

dence now before your Lordships upon that issue, I should certainly feel it impossible to say that the respondent had established the issue upon which he had placed his case." Upon this point the result of the Chancellor's reasoning is, that even though the Singer machine may have been in whole or in part patented (the patents having expired), and of peculiar construction, yet if the public or purchasers had come to give to the word "Singer" the significance of trade-mark, a manufacturer other than Singer could not use the same designation for his machines, and justify such use upon the ground that it was to be taken as the name of the article. In the present case, the evidence is clear that purchasers know nothing of the peculiar method of manufacture by which genuine A. C. A. tickings are made, but buy them on the faith of that symbol, which they accept as a guarantee of the excellence of the goods, *and* of its manufacture by the appellants. On the other hand, one of the appellees testified that the goods which they mark A. C. A. differ from the appellants', and the proof is that they are inferior.

The case last cited has been followed by another in which the same party is complainant, but, at the time of preparation of this brief, the volume of reports which should contain it has not reached this country. The following is extracted from the London *Times* of July 25th, 1879:—

"High Court of Justice, July 24, 1879.

"*Chancery Division.*

"(Before Vice-Chancellor Sir James Bacon.)

"The Singer Manufacturing Company *vs.* Loog.

"The plaintiffs in this case are a company incorporated by special act of the Legislature of the State of New Jersey, and they have an extensive factory in Glasgow for the manufacture of sewing-machines, having succeeded

to the business of T. M. Singer & Co. The plaintiffs contended that by reason of the sale and advertisement by themselves and their predecessors of various kinds of sewing-machines as 'Singer' machines, the name or designation 'Singer,' as applied to sewing-machines, had come to signify, not any specific principle of construction or mechanical arrangement of machines, but simply that the machines so designated were of the plaintiffs' manufacture, and that when purchasers asked for a Singer machine, they intended only to buy a machine made by the plaintiffs. The defendant is a London dealer in sewing-machines, who sells sewing-machines, not manufactured by the plaintiffs, marking them with brass plates as 'Singer,' or 'Singer's' machines, and the plaintiffs complain that he has thus endeavored to obtain the reputation attached to machines of their manufacture, and has diminished their business and attracted their customers, and this action is for an injunction to restrain the defendant from continuing this alleged fraud. The plaintiffs' patents for their machines have long since lapsed, and the defendant claims a right to sell as 'Singer's' machines any machine made according to the old patents.

"Mr. Kay, Q. C., Mr. Aston, Q. C., Mr. Benjamin, Q. C., and Mr. Rigby argued the case, which has occupied many days, for the plaintiffs, and urged the following points:—That the defendant used the name 'Singer' to designate machines not made by the plaintiffs, thereby inducing people to believe that his machines were made by the Singer Company. It was a case of personation rather than trade-mark. That the Singer machines had obtained a reputation not merely because of any peculiarity in their shape or construction, but because they had been made so well that purchasers preferred them to others, and this reputation the plaintiffs have a right to keep. That in the cases of *The Singer Manufactur-*

ing Company vs. *Kimball & Morton*, 3 Macpherson's Reports, and *The Singer Manufacturing Company* vs. *Wilson*, 3 House of Lords Appeal Cases, it had been decided that the plaintiffs in this case have a property in the word 'Singer,' as applied to a sewing-machine. That the defendant makes machines which have no unity of principle, and calls them all, indiscriminately, 'Singer' machines, which is a fraud upon the public. That this action was merely repetition of *The Singer Manufacturing Company* vs. *Wilson*, which had been decided practically in the plaintiffs' favor, only, as the defendant in that case became bankrupt, it was impossible to prosecute that action further with any successful result.

"Sir H. Jackson, Q. C., Mr. Webster, Q. C., and Mr. Everitt, for the defendant, argued that the principal questions to be tried were—first, Whether the plaintiffs had an exclusive right to the use of the word 'Singer,' as applied to their machines; and secondly, Whether the defendant had so used the word Singer as to injure the plaintiffs. As to the first, they did not admit that the word 'Singer' was a fancy name, like 'Eureka' or 'Excelsior,' in which the plaintiffs could have a property as a trade name. A mere manufacturer's name could not be so protected. They said that Mr. Singer having patented his principle of sewing-machines, the result was that now the word 'Singer' is understood by the public to mean any machine made according to his patents, and does not designate a machine made by the plaintiffs. They claimed the case of *The Singer Manufacturing Company* vs. *Wilson* as being in their favor, for the House of Lords had decided that the meaning of the name was a matter to be decided upon evidence, and so they had remitted the case to be heard anew. As to the second question, they did not admit that there was, in fact, any fraud in what the defendant had done, or that any injury was done to the plaintiffs, and on this

point a great number of witnesses were called on both sides, and their evidence commented upon at length, including Mr. Newton Wilson, defendant in the action of *The Singer Company* vs. *Wilson;* Mr. L. W. Thomas, of the firm of Thomas & Co.; Mr. F. J. Bramwell and Mr. Imray; and Mr. G. B. Woodruff, the general manager of the Singer Company; and very many wholesale clothiers and outfitters, such as Mr. Foxwell, Mr. Swears, of Regent street, and many other tradesmen.

" Mr. Kay was heard in reply.

" Vice-Chancellor Bacon held on the evidence that the defendant had put plates on his machines intending to deceive the public. He also held that the defendant had not proved that the word ' Singer ' had acquired the wide sense for which he contended, so as to apply to all sewing-machines in which what they called the Singer system was used, without reference to the person who manufactured them, and, holding that the defence entirely failed, he gave judgment for the plaintiffs, with costs."

Turning now to the American cases, the opinion of Judge Duer, to which reference has been already made, will, in the main, be found to support the principles which plaintiffs now assert; but the learned judge certainly seems to have fallen into a confusion of expression in using the word " trade-mark," where he seems to have meant " label," for it is the symbol—that which originates the *name in the market*, and assures the purchaser that he is buying goods of the reputation with which he has become acquainted—which is the true trade-mark, no matter what else may be upon the same label, or upon any number of separate labels (Browne on Trade-mark, page 63, section 93). Such symbol, in this case, certainly was and is " A. C. A." Moreover, the learned judge appears to have accepted upon less evi-

dence than would probably (in view of later cases and the present development of the law) be now required, the suggestion that *an entirely new combination of letters* constituted a designation of quality merely; but he had *some* evidence of the alleged fact in the sworn answer, to which he gave great weight, not only because the motion was a preliminary one, but also, because the question involved "the plaintiffs' legal title," which it was requisite he should first establish by proof or by action at law; and the matter was finally set right—possibly upon the defendants' finding that the proofs, as in the present case, were conclusively against that position, for the court (page 619) did not understand "the counsel for the plaintiffs to deny, that if the averments in the answer shall be *sustained* by proof, the title as claimed can not be supported." 1849.—*Amoskeag Co.* vs. *Spear*, 2 Sand. S. C., 599.

Canal Company vs. *Clark*, 13 Wall., 311 (the Lackawanna coal case), referred to in the answer, simply decided upon familiar principles, that the name of a well-known region in the State of Pennsylvania, could not be exclusively appropriated, and the reference by Strong, J., to *Amoskeag Co.* vs. *Spear* was solely to the *reasoning* of Judge Duer, which, if his premise that A. C. A. is a mark of quality were admitted, could not be questioned.

The Supreme Court of Connecticut has reviewed and applied the principles of *Amoskeag Co.* vs. *Spear*, in a case where, on the label, the name of the imitator was substituted for the name of the originator, but certain figures to denote the "pattern or size" of the article, were precisely copied, and granted the injunction. 1868.—*Boardman* vs. *Britannia Co.*, 35 Conn., 402.

An action was brought to restrain, amongst other things, the use of "303" upon steel pens.

Plaintiff's allegation was that he had for a long period so marked "a *particular kind and style* of pen." The

defence was that "words and figures indicative of the *kind, character, or quality* of the thing can not be used exclusively as a trade-mark."

The Commission of Appeals affirmed the decree for injunction, in an opinion by Lott, Ch. C., in which he said:—

"The said number was so impressed on said pen by the plaintiff, before it had been used by others, to distinguish *such pattern* or *character* of pen from other patterns made by him, and was adopted and used by him as his trade-mark for SAID pen in connection with his name and the words extra fine, and it had become established and well known as such. The said figures were selected arbitrarily by the plaintiff, and *of themselves* expressed no quality or size of the pen, and no other pens were then used which had said numerals impressed thereon." * * * * * * "It was known and ordered by stationers and other dealers by its said number '303,' to distinguish it from other pens made by the plaintiff of other patterns and descriptions." * * * * "The preceding statement of facts clearly shows that the said number was selected and used by the plaintiff as his *trade-mark*, to indicate, in connection with his name, the origin and ownership of the said pens so manufactured by him, and not to designate their quality *merely*, and that the defendants, by the adoption thereof, have done it in fraud of his rights." 1872.—*Gillott* vs. *Esterbrook*, Commn. of Appeals, 48 N. Y. Rep., 3 Sickels, page 374.

This court has said in *McLean* vs. *Fleming*, 6 Otto, 245, that: * * * *

"Equity gives relief in such a case upon the ground that one man is not allowed to offer his goods for sale, representing them to be the manufacture of another trader in the same commodity. Suppose the latter has

obtained celebrity in his manufacture, he is entitled to all the advantages of that celebrity, whether resulting from the greater demand for his goods or from the higher price which the public are willing to give for the article, rather than for the goods of the other manufacturer, whose reputation is not so high as a manufacturer. Where, therefore, a party has been in the habit of stamping his goods with a particular mark or brand, so that the purchasers of his goods having that mark or brand know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp; because by doing so he would be substantially representing the goods to be the manufacture of the person who first adopted the stamp, and so would or might be depriving him of the profit he might make by the sale of the goods which the purchaser intended to buy. *Seixo* vs. *Provezende*, Law Reports, 1 Ch., 195.

"What degree of resemblance is necessary to constitute an infringement is incapable of exact definition, as applicable to all cases. All that courts of justice can do in that regard is to say that no trader can adopt a trade-mark so resembling that of another trader as that ordinary purchasers, buying with ordinary caution, are likely to be misled. * * * * * *

"Much must depend in every case upon the appearance and special characteristics of the entire device; but it is safe to declare, as a general rule, that exact similitude is not required to constitute an infringement or to entitle the complaining party to protection. If the form, marks, contents, words, or the special arrangement of the same, or the general appearance of the alleged infringer's device, is such as would be likely to mislead one in the ordinary course of purchasing the goods, and induce him to suppose that he was purchasing the genuine article, then the similitude is such as entitles the

injured party to equitable protection, if he takes seasonable measures to assert his rights, and to prevent their continued invasion. *James* vs. *James*, Law Reports, 13 Eq., 425; *Singleton* vs. *Bolton*, 3 Doug., 293; *Morrison* vs. *Salmon*, 2 Man. & G., 385; *Boardman* vs. *Meriden Britannia Company*, 35 Conn., 413.

"Such a proprietor, if he owns or controls the goods which he exposes to sale, is entitled to the exclusive use of any trade-mark adopted and applied by him to the goods *to distinguish them as being of a particular manufacture and quality*, even though he is not the manufacturer, and the name of the real manufacturer is used as a part of the device. *Walton* vs. *Crowley*, 3 Blatchf., 440; *Emerson* vs. *Badger*, 101 Mass., 82. * * *

"Nor is it necessary, in order to give a right to an injunction, that a specific trade-mark should be infringed, but it is sufficient that the court is satisfied that there was an intent on the part of the respondent to palm off his goods as the goods of the complainant, and that he persists in so doing after being requested to desist. *Woolam* vs. *Ratcliff*, 1 Hem. & M., 259. * * *

"Subject to the qualification before explained, a trade-mark may consist of a name, symbol, figure, *letter*, form, or device, if adopted and used by a manufacturer or merchant in order to designate the goods he manufactures or sells, to distinguish the same from those manufactured or sold by another, to the end that the goods may be known in the market as his, and to enable him to secure such profits as result from his reputation for skill, industry, and fidelity. Upton Trade-marks, 9; *Taylor* vs. *Carpenter*, 2 Sandf. (N. Y.) Ch., 603; Coddington Dig., 9. * * * * * * *

"Where the similarity is sufficient to convey a false impression to the public mind, and is of a character to mislead and deceive the *ordinary* purchaser in the exercise of *ordinary* care and caution in such matters, it is

sufficient to give the injured party a right to redress, if he has been guilty of no laches. *Amoskeag Manufacturing Company* vs. *Spear*, 2 Sandf. S. C., 599; Coddington Dig., 109; *McAndrew* vs. *Bassett*, 4 DeG., J. & S., 380. * * * * * * * *

"Chancery protects trade-marks upon the ground that a party shall not be permitted to sell his own goods as the goods of another, and therefore he will not be allowed to use the names, marks, letters, or other *indicicia* of another, by which he may pass off his own goods to purchasers as the manufacture of another. *Croft* vs. *Day*, 7 Beav., 84; *Perry* vs. *Truefitt*, 6 Id., 60; *Newman* vs. *Alford*, 51 N. Y., 192. * * * *

"Two trade-marks are substantially the same in legal contemplation, if the resemblance is such as to deceive an ordinary purchaser giving such attention to the same as such a purchaser usually gives, and to cause him to purchase the one supposing it to be the other. *Gorham Company* vs. *White*, 14 Wall., 511."

The Supreme Court of New York, as recently as 1877, in the case of *Kinney* vs. *Basch*, 25 Am. Law Reg. (New Series, vol. 16), 596, enjoined the use of the device of the "sun's rays," the numerals "½," and the words "St. James" in connection therewith.

"The opinion of the court was delivered by Van Brunt, J. This action was brought to restrain an alleged infringement or imitation of certain trade-marks of the plaintiff, which he has attached to certain cigarettes manufactured by him. The defendants claim that the labels which they attached to the cigarettes manufactured by them are not such imitations of the plaintiff's labels as would mislead the public, and that even if they were, no symbols of property could ever be acquired in these words and symbols which the plaintiff claims were his trade-marks.

"A careful inspection of the labels in question shows beyond a doubt that those of the defendants were adopted in order to deceive the public into supposing, when they purchased the cigarettes of the defendants' manufacture, that they were those of the plaintiff's manufacture.

"As far as the use of the sun's rays is concerned, it seems to me the plaintiff has established beyond any reasonable doubt that he first adopted the device in connection with his manufacture of tobacco. The evidence to the contrary upon the part of the defense is of the most meagre and unsatisfactory character. The plaintiff has entirely failed to show any right to the exclusive use of the word 'corporal,' it being clearly shown that the word has been used in connection with manufactured tobacco for many years prior to its appropriation by the plaintiff.

"The only remaining question to be considered is the right of the plaintiff to the exclusive use of the words 'St. James,' and the figures '½,' upon his labels.

"It has been urged upon the part of the defendants, that geographical names can not be the subject of a trade-mark; neither can numerals, which only serve to indicate the nature, kind, or quality of an article.

"It is true, that the cases cited by the defendants sustain these propositions; but the later cases have proceeded upon different and more equitable principles in defining the grounds upon which courts of equity interfere in cases of this description.

"This interference, instead of being founded upon the theory of protection to the owners of trade-marks, is now supported mainly to prevent frauds upon the public. If the use of any words, numerals, or symbols is adopted for the purpose of defrauding the public, the courts will interfere to protect the public from such fraudulent intent, even though the person asking the intervention of

the court may not have the exclusive right to the use of these words, numerals, or symbols. This doctrine is fully supported by the latest English cases of *Lee* vs. *Haley*, Law Rep., 5 Ch. App. Cases, 155; and *Wotherspoon* vs. *Currie*, Law Rep., 5 House of Lords, English and Irish Appeals, 508; and also in the case of *Newman* vs. *Alvord*, 51 N. Y., 189.

"It is claimed by the defense that the use of the numerals '½' by the plaintiff is intended to represent that these cigarettes are made one-half of Perique and one-half of Turkish tobacco. Although the fact may be that the cigarettes may be thus composed, yet the numerals used do not, by any means, indicate this fact. They may as well relate to price, to size, to quality, to numbers, as to the quality of tobacco, and consequently can not be descriptive of any particular quality, except as they have been so used in connection with the plaintiff's label.

"It seems to me, therefore, that the plaintiff is entitled to protection in the use of these numerals in connection with his cigarettes. *Gillott* vs. *Esterbrook*, 47 Barb., 455.

"It being apparent that the use of the words 'St. James' by the defendants is intended to defraud the public into the belief that when they buy cigarettes with those words upon the labels, they were buying cigarettes of the plaintiff's manufacture, the court will necessarily interfere for the protection of the public.

"It is urged that the defendants' labels are no imitations of the plaintiff's. I am led irresistibly to the conclusion, that the adoption of the label by the defendants was solely because they thought the public might be deceived; and the differences were made in the hope that they might avoid possibly the damages arising from the use of a perfect imitation.

"I am of opinion, therefore, that the plaintiff is entitled to an injunction restraining the defendants from the use of the device of the 'sun's rays' upon their cigarettes,

and also from the use of the numerals '½,' and the use of the words 'St. James' in connection therewith."

The following is the opinion of Thayer, P. J., in the case of *Wamsutta Mills* vs. *Allen*, upon motion to dissolve the injunction, as reported in 35 *Legal Intelligencer* (Philada), p. 410:—

"The defendants, as appears by the bill and affidavits filed, are selling shirts which are stamped 'Wamyesta,' and which are advertised by them as 'made from Wamyesta muslin.' It is proved, and indeed admitted, that there is no muslin manufactured which is known as 'Wamyesta muslin.' The plaintiffs are engaged in manufacturing muslin of excellent quality, which has obtained an extensive reputation, and which is well known in the market as 'Wamsutta muslin.' The plaintiffs charge that the defendants have selected the name 'Wamyesta' because of its resemblance in sound and appearance to the name 'Wamsutta,' and with intent to deceive purchasers and to pass off their shirts as shirts made of 'Wamsutta' muslin; that the imitation is a fraudulent appropriation of the plaintiffs' trade-mark, and is injurious to them, being calculated to impair the reputation of their manufacture, and to injure them seriously in their business, because the muslin of which the defendants' shirts are made, and which they sell as shirts made of 'Wamyesta' muslin, is of a quality much inferior to the muslin manufactured by the plaintiffs and known as 'Wamsutta' muslin.

"The defendants, in their answer and affidavits, do not give any satisfactory explanation of their selection of a name so much resembling the plaintiffs' trade-mark in general appearance and sound, nor have they assigned any satisfactory reason for advertising their shirts as shirts 'made from Wamyesta muslin,' when no muslin exists which is known by that name. They content

themselves with alleging that there is no such resemblance between the two words as would be calculated to mislead the public, and that the muslin of which their shirts are made is of such a different description from the plaintiffs' muslin, that no one having knowledge of the kind of muslin made by the plaintiffs and exercising ordinary caution, could mistake one for the other. They have also produced affidavits of numerous shirt-makers and of persons engaged in the sale of muslins, declaring that the muslins used by the defendants in these shirts is of such different quality and make from the Wamsutta muslin, that they could not possibly mistake one for the other.

"It must be obvious, however, that the question is not whether experts would be deceived, but rather whether persons who buy would probably be deceived by the name which the defendants have adopted. Upon this point we are of opinion that the resemblance between the two words is of a character to deceive and mislead a certain class of purchasers—those who are acquainted with the reputation of the Wamsutta muslin, but who have little knowledge of the fabric itself. Such persons might readily confuse the two names, and purchase the defendants' shirts for shirts made from the plaintiffs' muslin. 'Wamyesta' might well be mistaken for 'Wamsutta,' in view of the fact that, as appears by the proofs, there is only one muslin manufactured, which is known by a name resembling that which the defendants use. It is difficult to conceive that the defendants have adopted this name innocently or by accident. The resemblance is strongly suggestive of the hypothesis that the defendants have adopted it because of the facility with which the two words may be confused in the minds of a certain class of purchasers. I need not cite authorities to show that a man may acquire property in a trade-mark, or that, having acquired it, he is entitled to

the restraining process of a court of equity to prevent the injury he will experience by its being unlawfully appropriated or imitated by others.

"As to the point made by the defendants, that the plaintiffs are manufacturers of muslins, and the defendants are manufacturers of shirts, and therefore the plaintiffs can not complain of the use of their trade-mark, or of a servile imitation of it by defendants, when affixed to their shirts, we do not see the force of such reasoning. It is too plain to require any demonstration that if the defendants manufacture shirts of a muslin greatly inferior in quality to the plaintiffs' muslin, and pass them off upon the public as shirts made of the plaintiffs' muslin, the plaintiffs may suffer greatly thereby in their reputation as manufacturers, and consequently in their sales of the muslin which they manufacture. Against this injury the plaintiffs are entitled to be protected by the writ of injunction, for the acts of the defendants are, in the language of the act conferring this jurisdiction, 'contrary to law, and prejudicial to the rights of individuals.'

"Motion refused, and it is ordered that the preliminary injunction heretofore awarded be continued until further order."

In aid of the contention that the symbol A. C. A. falls within the class of marks or signs which, being simply designations of place, quality, size, &c., cannot be exclusively appropriated, several minor points were made in the court below, on behalf of the appellees, in anticipation of which, in this court, we deem it proper to submit the following propositions and authorities:—

(1.) The fact that the *label* of the appellees is not the same as the label of the appellants, and that the words "Omega Ring Twist" are substituted for the words "Amoskeag Manufacturing Co.—Power Loom," does not justify the use of the letters A. C. A. by the appellees.

In *Kinney* vs. *Basch* (*supra*), Brunt, J., said, and it might be said in this case, "It is urged that the defendants' labels are no imitation of the plaintiffs'. I am led irresistibly to the conclusion that the adoption of the label by the defendants was solely because they thought the public might be deceived; and the differences were made in the hope that they might avoid possibly the damages arising from the use of a perfect imitation."

The proofs establish that "A. C. A." is the *essential* mark. It *is* the mark. It gives currency to either label. By that sign the genuine goods are recognized, by that name they are known, and upon that symbol purchasers rely. Nothing else upon the true label contributes materially to the value of the device—the trade-mark—which is placed in its centre; and nothing upon the spurious label mitigates the injury which is inflicted, or palliates the wrong which is perpetrated by placing A. C. A. upon it. The appellees have not placed *their own* name upon it, and, if they meant "Omega" to be their trade-mark, or "ring twist" to describe the goods, why did they add A. C. A.?

See Browne on Trade-marks (a work several times cited in *McLean* vs. *Fleming*, *supra*), sections 34, 36, 44, 61, 85, 93, 227, 228, and 256.

The evidence of William F. Wehrman, a manufacturer of mattresses, is but a sample of that of many to the same effect. He says, "I really *could not tell* whether *any* other words or devices are in connection with the letters A. C. A.; THESE LETTERS *are understood by the trade to be the Amoskeag Company's make.*"

In *Kinahan* vs. *Bolton*, 15 Irish Ch., 75, it was contended for respondent that he might lawfully use the letters "L. L." as a mark of quality, so long as he did not use the name of the original manufacturer in connection with them; but it was decided that the two letters constituted a trade-mark.

In *Ford* vs. *Foster*, L. R., 7 Ch., 611, it is held that although "Eureka" was said to be the name applied by the original user to a particular shape of shirt, and although he always placed his name before that word, to designate, as was said, that the article was of his manufacture, that another firm could not use the same word ("Eureka") even in connection with their own firm name.

In *Singer Co.* vs. *Wilson*, L. R., 3 App. Cases, H. of L., 377, there was no representation that the machines *were* made by plaintiff, and the use of the word Singer was connected with defendant's name.

In *Boardman* vs. *Britannia Co.*, 35 Conn., 402, the name of the imitator had been substituted for that of the originator.

In *McLean* vs. *Fleming*, 6 Otto, 245, it is said that "no trader can adopt a trade-mark so resembling that of another trader, as that *ordinary purchasers*, buying with ordinary caution, *are likely to be misled*."

Tin plates made by John Morgan at Carmarthen became known by the designation of "M. C." tin plates—the letters having been originally intended to denote "Morgan, Carmarthen." Several affidavits tended to show that M. C. plates *were ordered by that designation only*.

On bill filed, the Lord Chancellor (Cottenham) refused to enjoin in the first instance, on the sole ground that the question which of the litigants had the better *right* to use the mark was "one of considerable nicety;" but he did not question that those letters constituted a valid trade-mark for one or other of the parties, and he said: "Now, undoubtedly, if the case had stood upon the use of the mark 'M. C.' by the plaintiffs, and there had been nothing but the fact of another company, forty miles off, assuming the same mark; then, *although the name of the place were added* by the latter, *yet if, practically, that addition did not protect the plaintiffs* from hav-

ing it supposed that the goods so marked were theirs, it would not afford an answer to the charge; for the distinction must be such as would protect the plaintiffs from the injury they might sustain from a deception practised on the public; and it is immaterial what contrivances are used, if that be, in fact, the effect of the use of the marks by the defendants." 1837.—*Motley* vs. *Downman*, 3 My. & Cr., 1.

A bill was filed for injunction against unauthorized use of plaintiff's name and certain *numbers* which he had adopted on thread. It was argued that "the arrangement of numbers in this case was neither a trade-mark nor a name; any one is at liberty to use numbers * * * * * The court will not go the length of granting an injunction, where there has been no assumption of a trade-mark or a name, but only the use of particular numbers."

The court (Wood, V. C.) dismissed the bill without costs, on the ground that the defendants had not actually violated the trade-mark of plaintiff, but had sold the goods to a third person (who applied the mark) on the representation (possibly from mistake) that the goods were of plaintiff's manufacture. He said, however, that some points had been asserted on behalf of the defendants, which he could not pass without notice, and on the subject of the use of plaintiff's numbers, remarked: "The only remaining point is the question of the numbers, which appears to me to be the most unjustifiable part of the defendants' case." "The conduct of the defendants in putting these numbers in the invoices was such as to justify the plaintiff in having a complete investigation of the whole case." 1866.—*Ainsworth* vs. *Walmsley*, L. R., 1 Eq., 518.

In *Siegert* vs. *Findlater*, L. R., 7 Ch., 801, the defendant put his name on the wrapper.

The law goes even further upon this point, for any

scheme or contrivance, although not strictly amounting to piracy of trade-mark (*e. g.*, the assumption, by *any* means, of the trade name of another's goods), which is designed, or is likely, to deceive the public into the belief that the goods of one trader are those of another, will be restrained. This appears from several of the cases cited, but a few only need be referred to here.

In *Singer Co.* vs. *Wilson*, L. R., 3 H. L. App. Cases, Chancellor Cairns, referring to the defense that what was done "was done by way of advertisement, or statement or representation '*in gross*,' and not attached to the machine," said that he was unable to see any difference in point of principle.

"Nor is it necessary, in order to give a right to an injunction, that a specific trade-mark should be infringed; but it is sufficient that the court is satisfied that there was an intent on the part of the respondent to palm off his goods as the goods of the complainant." *McLean* vs. *Fleming*, 6 Otto, 245.

The Baron de Seixo marked his wine with a crown, and an eagle, with the letters "B. S" (meaning Baron de Seixo) on the head of the cask, with the word "Seixo" and the year of vintage at the bung-hole. *It was known in the London market as "Crown Seixo" wine.* Defendants marked on the head, with a crown and the letters "C. B." (Caldas Bros.) and the words "Seixo de Cima" (Upper Seixo) and "1861;" and at the bung-hole a crown, "C. B." "Seixo de Cima," and "1861." Bill to restrain the mark, or a crown, and the word "Seixo." Injunction was granted by Vice-Chancellor Wood, and affirmed by Lord Cranworth, who said: "It would be a mistake, however, to suppose that the resemblance must be such as would deceive persons who should see the two marks *placed side by side.* The rule so restricted would be of no practical value. If a purchaser, looking at the article offered to him, would na-

turally be led by the mark impressed on it to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the court considers the use of such a mark to be fraudulent. But I go further. I do not consider the actual physical resemblance of the two marks to be the sole question for consideration. If the goods of a manufacturer have, from the mark or device he has used, become known in the market by a particular *name*, I think that the adoption by a rival trader of any mark which will cause his goods to bear the *same name* in the market, may be as much a violation of the rights of that rival as the actual copy of his device. It is mainly on this ground that I have come to the conclusion that the decision of the Vice-Chancellor in the present case was correct. * * * * The present case is thus brought distinctly within the principle on which all these cases rest. The plaintiff has adopted a device or trade-mark, which has caused his wines to obtain celebrity *under a name descriptive of that trade-mark*. The defendants have adopted a trade-mark which could not fail to lead purchasers to attribute to the wines so marked *the same name* as that under which the plaintiff's wines were known, and so to believe that in purchasing them they would be purchasing the wines of the plaintiff. Against the use of such a trade-mark the plaintiff has, I think, a right to have the injunction of this court." 1865.—*Seixo* vs. *Provezende*, L. R., 1 Ch., 192.

The use of the *name* "Pall Mall Guinea Coal Company," in Pall Mall, was enjoined, on the ground of fraud, at the suit of one who had originally used that name in that street. Per Malins, V. C., Giffard, L. J. 1869.—*Lee* vs. *Haley*, L. R., 5 Ch., 155.

There was no proof that any one had been misled, and there was no complaint of resemblance in the label, but only to the use of the word "original," which was

enjoined by Lord Romilly, not as an imitation, but as a device to mislead the public. 1871.—*Cocks* vs. *Chandler*, L. Rep., 11 Eq., 446.

In another recent case, Vice-Chancellor Hall was asked for an injunction upon the ground that the defendant's mark was such as would cause his goods to be designated by the same *name* as the plaintiff's, and he refused to grant it, but distinctly upon the ground that the evidence did not lead him to believe that such would be the result. He referred to and considered several of the cases heretofore cited, and, if the facts proved had warranted, would doubtless have applied their principles to the case before him. 1874.—*Cope* vs. *Evans*, L. R., 18 Eq., 138.

The court, one of the judges of which had decided *Amoskeag Company* vs. *Spear*, at the suit of a plaintiff who had no sign up, but whose hotel had been originally designated by him as the Irving *House*, and afterwards became known as the Irving *Hotel*, enjoined a defendant against using the name "Irving Hotel," for a different public-house. Judge Campbell said: "We think that the principle of the rule is the same, to whatever subject it may be applied, and that a party will be protected in the use of a *name* which he has appropriated, and by his skill rendered valuable, whether the same is upon articles of personal property which he may manufacture, or applied to a hotel where he has built up a prosperous business." 1851.—*Howard* vs. *Henriques*, 3 Sandf. S. C., 725.

In like manner the exclusive right to use the name "Osborne House" has been sustained in *Hudson* vs. *Osborne*, 39 L. J. (Ch.), 79.

And a defendant was enjoined from placing on his sign the name of plaintiff, preceded with the word "from" in small letters. *Glenny* vs. *Smith*, 2 Dr. & Sm., 476.

It has been held, per ROMILLY, M. R., that "the defendants must be restrained from the publication of their work, and they are not entitled to publish a work with such a title, or in such a form as to binding or general appearance as to be a colorable imitation of that of the plaintiff." *Mack* vs. *Petter*, L. R., 14 Eq., 431.

In *Braham* vs. *Beachim*, L. R., 7 Ch. Div., 848, the defendants were enjoined from using the name of "The Radstock Colliery Proprietors," because calculated to deceive by enabling the defendants to sell, as and for coal raised by the plaintiffs, coal raised by themselves.

(2.) That careful buyers might not be deceived, might be a reason for not protecting careless purchasers, but the injury to the *producer* is the same whether the goods of another be palmed off as his upon the wary or upon the unwary. The test is not whether wholesale buyers are misled, but whether retailers and consumers might be. If all consumers do not discriminate in the end it would be indifferent, even to the wholesale buyers, from which of two they bought. Browne on Trade-marks, sec. 34; *Ford* vs. *Foster*, L. R., 7 Ch., 611; *Hirst* vs. *Denham*, L. R., 14 Eq., 542; *Siegert* vs. *Findlater*, L. R., 7 Ch. Div., 801.

In *Singer Co.* vs. *Wilson*, L. R., 3 App. Cas., H. of L., 390, it is said (per Cairns, Ch.): "It must be borne in mind that we have to consider the case, not merely of experts in the history and peculiarities of sewing-machines, but the case of common workmen and workwomen, having very few and limited ideas, and a very imperfect knowledge upon the subject of such machines."

Whatever is sufficient to enable the defendant "to palm off his goods as the goods of the complainant," is sufficient to induce the intervention of the court. *McLean* vs. *Fleming*, 6 Otto, 245.

(3.) Although positive proof of fraudulent intent is not required, and the action of the courts mainly depends

upon the right of the plaintiff and the injury done to that right, which is the same whether the injury be inflicted fraudulently or inadvertently, yet the motive of the defendant is often a proper and most pregnant subject of inquiry.

To that inquiry, in this case, but one reply is possible. That the use of the letters A. C. A. by the appellees was likely to mislead, could not but have been known to them when they commenced to use them; that such would be the natural tendency and consequence of such use of them, the evidence settles beyond doubt; and that the object of the appellees in selecting and applying them was to deceive purchasers into the belief that goods manufactured by the appellees had been made by the appellants, is sufficiently apparent from the unsatisfactory explanation given by one of themselves, when under examination as a witness (Record, pages 172–3), and their failure to produce any paper, or any other witness, to supplement his statements upon the subject.

Even the name of the place of origin of an article may be supported as a trade-mark, against one who does not say "precisely where in fact he got" the article which he sells. (*Per* Wickens, V. C.) 1872.—*Radde* vs. *Norman*, L. R., 14 Eq., 348.

It could hardly be said in this case, as in *Singer Co.* vs. *Wilson*, that "what the motive of the defendant may be the court has very imperfect means of knowing."

"A disguise is not generally assumed for an honest object. It is a mark more characteristic of deception and fraud. It defeats the very end and object contemplated by legitimate competitors—the choice to the public to select between the articles for sale—and operates as a deception and imposition on the dealer." *Kinney* vs. *Basch*, 11 Paige, 292.

GEO. M. DALLAS,
JAS. E. GOWEN,
For Appellants.

No. 112. October Term, 1879.

Supreme Court of the United States.

THE AMOSKEAG MANUFACTURING CO.,
APPELLANTS,

vs.

D. TRAINER & SONS,
APPELLEES.

APPELLEES' BRIEF.

E. G. PLATT,
SAM'L DICKSON,
JOHN C. BULLITT,
For Appellees.

Allen, Lane & Scott, Printers, 233 South Fifth Street, Philadelphia.

Supreme Court of the United States.

OCTOBER TERM, 1878. No. 341.

The Amoskeag Manufacturing Company, Appellants,

vs.

David Trainer et al.

APPEAL FROM CIRCUIT COURT FOR EASTERN DISTRICT OF PENNSYLVANIA.

COUNTER-STATEMENT.

The Amoskeag Manufacturing Company, of New Hampshire, the complainants in the bill in the court below, and appellants here, commenced manufacturing tickings at their works, on or about the year 1827. As was the custom with persons engaged in the manufacture of that and numerous other kinds of goods, they marked the different grades or qualities with letters denoting quality, such as A, B, C, D. These were letters well known in the trade, and with adjectives such as *superior*, *superfine*, &c., they had become established as signs of quality merely. And they were admittedly used by the complainants as marks of excellence for the different grades of their goods. About the year 1834, the said complainants having introduced a still higher grade or quality, to distinguish it, instead of the words "superior" or "superfine," or "A A,"

or "A A A," used the letters "A. C. A." The complainants' testimony shows conclusively that it was adopted and used as a mark of quality only. It was simply a higher grade of this kind of goods manufactured by the complainant, viz., ticking. They might as well have adopted the letters "A A A," and they would have been equally effective in distinguishing the goods from the lower grades and would have been equally well understood by the trade. Yet no one can doubt that if they had done so, the former and present attempt of the complainants would have been made, and the arguments then and now used would have been advanced with equal force. Nevertheless, could anything be more descriptive of quality than a letter or letters in a trade-mark, like the complainants', containing their name, a peculiar design, the words power-loom, and their place of manufacture, but varying with different grades or qualities of the goods in the use of the letters "A A A," "A," "B," "C," "D," or "A. C. A.," "A," "B," "C," "D"?

In the year 18 , the complainants for the first time, in the famous case of Amoskeag *vs.* Spear, attempted to claim the letters "A. C. A." as a trade-mark. In point of fact, their trade-mark was clearly the peculiar design or device adopted by them with the words inscribed therein.

This attempt, as is well known, resulted in signal failure. Judge Duer at once saw through the complainants' case, and in his opinion (hereafter more particularly discussed), exposed the vice of the claim and the nature of the use of the letters referred to. His opinion is a model of reasoning; and upon the question involved in the case, as well as upon the law relating to trade-marks generally, is, probably, the leading case in this country. It disposed of the whole claim of complainants, and the letters "A. C. A." applied to a grade or quality of ticking thus became adjudicated, as something *publici juris*, as much so as if some brewer had attempted to restrain the use of the words

"XXX," and failed. They were so recognized and treated, certainly by the bench and bar, and it is believed by the whole community.

Under these circumstances, the defendants, manufacturers of ticking also, who had a distinctive and marked trade-mark of their own, "Omega Ring Twist," using with it, like the complainants and other manufacturers, letters to denote grade or quality, began to manufacture a higher grade of their goods, and naturally chose what had been settled to be the mark of a higher grade than "A," viz.: "A. C. A." The two labels printed in the appellants' brief were always used in connection with others, giving the name of the manufacturer. This was done in 1867, and surely in this there was nothing wrong. They did not attempt to imitate the plaintiffs' trade-mark, unless, indeed, their trade-mark consists now and has always consisted of the letters "A. C. A." Upon inspection, the difference is obvious at first sight, and after all, that is the true test of a *mark* the right to which is only acquired by actual use and as used. (Lawson *vs.* The Bank, 18 C. B., 84.) For five years the complainants stood by and never attempted to re-assert their rights. They naturally acquiesced in what they supposed had been settled as the law. Then, perhaps inspired by the advice of astute counsel, they concluded once more, after twenty years had elapsed, and in spite of the opinion of Judge Duer, to enter the lists again in a different court, and endeavor to reverse the legal conclusion which had been found against them. The statement of the case of the appellants shows that this is so. The claim of the appellants virtually is, that if they used a combination of letters to denote each of their grades or qualities of goods, each one of the said combinations would become a trade-mark, whereas it has been repeatedly settled that the use of a trade-mark is to designate the identity of the goods made by the manufacturer, and not to designate quality or grade.

The reason for this is obvious, as will be shown in the proper place.

BRIEF OF ARGUMENT OF APPELLEE.

I. The elaborate statement of facts and argument made by the learned counsel for the appellants would, under ordinary circumstances, require a more minute restatement of the facts of the case and analysis of the cases than has been or will be attempted in this brief. The reasons, however, for another course are obvious. If any case in the United States can be considered a leading case upon the law of trade-marks, it is Amoskeag *vs.* Spear, 2 Sandf., S. C., 599. It has been followed and cited with approval in almost every case since decided. The facts then existing are virtually the facts here, the defendants being different. And the careful, accurate, and lucid reasoning of Judge Duer could with propriety be now advanced by the appellees, if this were a case of first impression. It is true that the industry and ingenuity of the learned counsel for plaintiff in error have succeeded in unearthing the fact, heretofore unknown to the profession and the public, that a decree was entered by consent of the parties, enjoining and restraining the defendants from using the letters A. C. A. It is needless to say that no importance can be attached to a fact of this kind. The defendants may not have considered the use of the letters of any great importance, and may further have been unwilling to continue an expensive and fruitless litigation, or they may have settled the case upon other and collusive terms. The fact is, however, that the decision as made by Judge Duer was reported and known as the decision of the court, and has been cited and followed for over twenty-five years by the courts and the profession. It is difficult to see why *laches*, in asserting a title to a trade-mark, should not be as fatal to the right of relief as in respect to other property. The statute of limitations runs as against the

true owner of real or personal property, and the whole doctrine of equitable estoppel rests on acquiescence, and not only has there been delay here, but the decision of Judge Duer has been a judicial definition of the meaning of these letters more authoritative than if given by any lexicographer. The letters "A. C. A." have become as well a recognized and distinctive mark of quality as the letters A, B, C, D, or No. 1, No. 2, No. 3, &c. It is conceded by the counsel for complainants that the use of those letters or numerals could not be restrained; but the distinction attempted to be set up and exploded in Amoskeag *vs.* Spear is again advanced here. The truth is that the letters never were used to indicate a particular kind of manufactured goods. They simply indicated a superior *quality* of ticking, as compared with other qualities made by complainants. This is abundantly shown by the reasoning of Judge Duer, and upon this branch of the argument no stronger statement can be made than by citing his language as used in the case of Amoskeag *vs.* Spear, page 602.

"I pass now to the question which the parties evidently consider as practically the most important, namely, whether the residue of the injunction shall be stricken out or retained. The injunction, as it now stands, prohibits the defendants from using any stamp, mark, or label for or upon any tickings having thereon the letters 'A. C. A.,' and the propriety of continuing this prohibition in force depends upon the fact whether the plaintiffs have shown an exclusive title to the use of these letters upon their own tickings as declaratory of their right of property as manufacturers. If they have, the prohibition must be retained; but if the letters 'A. C. A.,' as used by them, are merely an indication of the relative quality of their tickings, it must be expunged. As the plaintiffs could not have acquired by their prior occupation and exclusive right in the use of the words 'First Quality' or 'Superfine,' they can

not have acquired a right by similar means to an exclusive use of any letters, marks, or other signs, which are merely a substitute for the words, and intended to convey the same meaning. It is immaterial whether words or letters or figures, or any other signs, are used, if the single fact which they are used to indicate and declare is a truth that other manufacturers or dealers have an equal right to express and communicate.

"The complainant avers that the letters 'A. C. A.' signify as follows:—'A. C.,' Amoskeag Company, and 'A,' best quality. And several of the witnesses, whose affidavits are produced, swear that the letters are so understood by them, and, as they believe, are so generally understood. On the other hand, these allegations are explicitly denied by the defendants, who aver in their answer that it is the universal practice of manufacturers to distinguish the various qualities of their goods by one or more letters of the alphabet, and that the letters 'A. C. A.' in the label of the plaintiffs are only used and intended to be understood as a declaration to the public that the tickings to which the label is attached are the best quality of those which they manufacture. Such are not the exact words, but such is the substance of the averments in the answer, and the conclusion to which my reflections have led me is, that these averments are true. It was doubtless of importance to the plaintiffs to make known to the public by a declaration in their label that they are the manufacturers of the excellent tickings which they send into the market, and for this reason the name of their corporation, 'Amoskeag Manufacturing Company,' appears in full upon their label. The purchasers of the tickings either read those words, or they do not. If they do, the letters 'A. C. A.,' even if they understand them as indicating the name of the company, give them no additional information; if they do not, the meaning of the letters, if such is their meaning, will not be understood.

"To the first the letters thus interpreted are useless; and to the second unintelligible; it is a self-evident truth, that initial letters can never communicate the knowledge of a name to those who were previously ignorant of it. The only purpose they can answer is that of recalling a name already known. Nor is this all; the letters 'A. C.,' considered as initials, would not, probably, have the effect even of recalling the name which they are said to signify; to answer this purpose, it is plainly necessary that the initial letter of each word comprising the name, whether of an individual or of a corporation, should be given, and this, where initials are used as a substitute for the name, is the universal practice. Here the letter 'M' is omitted, yet the word 'manufacturing' is an essential part of the corporate name; it is, therefore, highly improbable that the letters 'A C' were used by the plaintiffs in a sense in which it was most unlikely that others would understand them. They probably adopted these letters because they were partly the initials of their corporate name; but it is not, I am persuaded, for the purpose of signifying that name, and thus indicating their ownership, that they employ them; their value and meaning is wholly different. The final letter 'A,' we are told, is alone used to designate the quality of the tickings; it alone signifies that they are the best quality of those which the plaintiffs manufacture; but if this were true, the letters 'A C' might be erased, and the final 'A,' as a designation of that quality, would alone be sufficient. It is, however, admitted that such is not the fact. Another label which the plaintiffs attach to their tickings was produced upon the hearing, resembling in all respects that set forth in the complaint, except that the single letter 'A' is found in the same place as the three letters 'A. C. A.,' and it was admitted that this label is only attached to tickings of the second quality, while that containing the three letters is reserved and used exclusively for those of the best. The conclusion is not to be resisted;

it is to designate the best quality of tickings that the three letters are used; it is this purpose they answer and none other.

"The plaintiffs aver in their complaint that they have invented a stamp or label, the same which they set forth 'by which to designate the best quality of their tickings,' but how have they effected this object? Strike from their label the letters 'A. C,' there is no such designation; restore them, it is found. As the use of the three letters conjointly is, therefore, necessary to express the meaning which the plaintiffs admit that they intended to convey, I am forced to believe that it was for this purpose that they were first adopted and are alone employed. It is doubtless true, as is stated in the complaint, and sworn in many of their affidavits, that the tickings of the plaintiffs, to which their 'A. C. A.' label is attached, have for many years been known in the market as the 'A. C. A. tickings,' but this fact neither alters the meaning of the letters nor takes from others the right to employ them, if the letters designate only the quality of the goods and not their origin or ownership; the tickings of the defendants, if the best quality of those which they sell, are as truly 'A. C. A. tickings' as those of the plaintiffs. The words 'power-loom' are found upon the label of the plaintiffs, yet it is not contended that I could restrain the defendant from using the same words as they have done upon their own. If there exists a distinction I am unable to perceive it. The claim of an exclusive right rests in both cases upon the same grounds; it is valid in both or in neither."

This decision was in effect a proceeding *in rem*. It settled the fate of this particular combination, as effectually as any libel in admiralty or decree of distribution in equity, or suit establishing dedication of a common or highway to the public. These letters thereby became dedicated to the public, and were made a part of that general terminology which is the common property of all the world, and

whether the ruling was, therefore, right or wrong in principle, these letters would belong to all alike. But it was entirely sound, and has been expressly approved by this court.

In the well-considered case of Canal Co. *vs.* Clark, 13 Wall., 311, his Honor Mr. Justice Strong adopted in the strongest language this decision made in Amoskeag *vs.* Spear, and in the course of his opinion, said, page 323:—

"The trade-mark must therefore be distinctive in its original significative pointing to the origin of the article, or it must have become such by association. And there are two rules which are not to be overlooked. No one can claim protection for the exclusive use of a trade-mark or trade-name, which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities, ingredients, or characteristics, be employed as a trade-mark, and the exclusive use of it be entitled to legal protection. As was said in the well-considered case of The Amoskeag Manufacturing Company *vs.* Spear, 'the owner of an original trade-mark has an undoubted right to be protected in the exclusive use of all the marks, forms, or symbols that were appropriated as designating the true origin or ownership of the article or fabric to which they are affixed; but he has no right to the exclusive use of any words, letters, figures, or symbols, which have no relation to the origin or ownership of the goods, but are only meant to indicate their names or quality. He has no right to appropriate a sign or symbol, which, from the nature of the fact it is used to signify, others may employ with equal truth, and therefore have an equal right to employ for the same purpose," citing numerous cases in support of this view.

Now it is to be remembered that the language thus quoted by his honor, Judge Strong, was used with reference to these very letters A. C. A. employed by the very same complainants. In not one single case has the opinion and reasoning of Judge Duer ever been controverted, while, as before said, it has been cited in nearly every case with approval. Indeed the argument of the counsel for plaintiffs in error in Canal Co. *vs.* Clark, concedes that when the words or letters are descriptive of *quality* merely, *as* in Amoskeag *vs.* Spear; Stokes *vs.* Landroff, 17 Barb., 608, or Corwin *vs.* Daly, 7 Bosworth, 222, it is an exception to the rule, and that it can not then be claimed as a trade-mark. See argument of counsel, 13 Wall., page 317. The attempt is then made to distinguish the use of the word "Lackawanna," and the opinion of Mr. Justice Strong shows that the exception admitted by counsel was fully recognized by the court, and the other point then passed upon and decided adversely to the plaintiff in error.

To the same effect is the decision is Raggett *vs.* Findlater, L. R., 17 Eq., 29. The principle that a word or letter denoting quality was not the subject of a trade-mark is again reiterated, though many of the cases cited by the appellant here were quoted in the argument of that case. Yet the defendant's counsel were not called upon, although it may be noted that the Vice-Chancellor had decided Wotherspoon *vs.* Currie (the Glenfield Starch Case), which was affirmed by the House of Lords. The words against the use of which the injunction was sought, were "Nourishing Stout." After recognizing in the fullest manner the right of a manufacturer or dealer to adopt a trade-mark, which can distinguish it from the articles of other people and become a mark of his own, the Vice-Chancellor said:—

"If I am right in saying that the particular quality of the stout is this nourishing quality, must not every man

be at liberty to describe his stout, whether brewed by himself or brewed by another and sold by him, as being a nourishing beverage? Why are not Messrs. *Findlater & Co.* at liberty to say theirs is a nourishing stout as well as the plaintiffs'? Upon principle it appears to me there must be something to go beyond a mere English adjective describing the quality of the material. If you use a foreign word, or a word in a dead language not known to people in general, that word itself, because it is not understood, may very reasonably become a trade-mark."

The Vice-Chancellor then reviews the cases of McAndrews *vs.* Bassett, Wotherspoon *vs.* Currie, Ford *vs.* Foster, Broadhurst *vs.* Barlow, Seixo *vs.* Provezende, Cocks *vs.* Chandler, Lawson *vs.* Bank of England, Lee *vs.* Haley, Knott *vs.* Morgan, and Fullwood *vs.* Fullerton, and shows the differences between them and the case before him. His remarks in reference to the use of word "Anatolia" in McAndrews *vs.* Bassett, and the views expressed by Lord Westbury in that case, are instructive as showing that the conclusions reached by this court in Canal Co. *vs.* Clark, and by the Vice-Chancellor, are substantially identical.

He then proceeds as follows, page 4:—"The case which does approach most nearly to this, and in which I think the views I am expressing are entirely borne out, is the case of Braham *vs.* Bustard, 1 H. & M., 447, with regard to the 'Excelsior Soap.' The facts were these: The plaintiff had manufactured a white soft soap and called it 'Excelsior White Soft Soap.' The same principle applies here. I have already said that a fanciful word, not understood by the public, you may have the exclusive right to use, because it will become a trade-mark. 'Excelsior' is a Latin word which would be understood by few of the public, and does not and could not describe quality. It is a fanciful word which the owner chooses to adopt. Then

the defendants called their soap also 'Excelsior White Soft Soap.' The Vice-Chancellor Wood in giving judgment said: 'It is said that the name is a ridiculous one, and the court will not interfere to protect it. But though it is true that the court will not interfere to protect it. But though it is true that the court will not, if it can avoid it, be made the medium of a mere puffing advertisement—still, if, as here, the plaintiffs have a right of sufficient value to induce others to attempt fraudulent violation of it, the court will interfere to prevent them from being cheated. Again, the defendants urge that Excelsior is merely a mark of quality like 'superfine' or 'superior;' but there seems to be a double answer to this. In the first place the plaintiffs do not sell *two or three qualities* of soap, calling one of them their Excelsior; they have only one quality, which they denominate the 'Excelsior White Soft Soap,' and there is nothing except itself with which to compare it. But in the second place, the manner in which, as has been proved, this name has been generally used in the market, shows that it is more like such names as 'Victoria,' 'Albert,' 'Eureka,' &c., which are not names of quality, but simply arbitrary designations for the sake of distinction. If the plaintiffs had issued their soap under the name of Albert White Soft Soap, I should undoubtedly have interfered to prevent any one from adopting that name to their prejudice; and here it is proved that the plaintiffs' goods had undisputed possession of the market for at least six months under the name at present in dispute, and have acquired a reputation under that name." After citing this the Vice-Chancellor says: "I think the whole of that proceeded on the basis that if the word had been an English word describing quality, the word merely describing quality would not be the subject of a trade-mark. My opinion is that for the protection of the public, it is necessary a trade-mark should be something beyond a mere English word denoting quality. If the plaintiff was desirous of possess-

ing the advantage of his trade-mark, he had the matter completely in his own hands, because in order to distinguish it from all others he might have associated his name with it or the name of his predecessor, or something which would distinguish it from merely nourishing stout, which in my opinion any person has a right to call his stout, if it be that which it is said in the ordinary sense of the word to be nourishing stout. The word *nourishing* itself will not do. If the trade-mark of the plaintiff is more than that, nothing can be more clear than that the defendants have not imitated it. If his case is a colorable imitation of the label, such an imitation has not taken place. If he has wholly rested his case on the word 'Nourishing,' I am clearly of opinion that it is no trade-mark, and on that ground I think his case wholly fails."

These remarks have been cited at this length, because they are so peculiarly fitted to the present case. As was intimated by Vice-Chancellor Wood, in Braham *vs.* Bustard, the fact that there were other grades or qualities of the goods called by other names, might make a material difference, even with such a word as "Excelsior." But here it appears by the pleadings and the evidence, that the appellants had other grades of ticking, marked A, B, C, D; and that wishing to mark a higher quality, they used the letters A. C. A. The opinion of Judge Duer clearly shows this also. The defendants, in like manner, having used the single letters, naturally adopted a familiar mark of the grade or quality of their goods next above those called A. The letters were never used except in connection with the full name of the plaintiffs, on *their* trade-mark, or by the defendants on their distinctive trade-mark printed on the label. From reading the testimony of the plaintiff one would hardly infer that the witnesses were in the habit of dealing in Amoskeag As, Bs, Cs, and Ds, as well as Amoskeag "A. C. As." No one familiar with the plaintiffs' mark could ever mistake the defendants' for it,

and although testimony has been taken in many cities, no case of actual mistake has been produced.

If the complainants had used the word "superior," or "superfine," to designate a quality or grade of their goods, instead of the letters A. C. A., it could hardly be contended that they could now claim a trade-mark in either of those words. The simple truth, as has been before said, is that the appellants adopted the letters to signify quality, and they have not proved otherwise in this or the preceding case; that having so adopted and used it they attempted in Amoskeag *vs.* Spear to convert it into a trade-mark. This attempt signally failed; but they are now again, after the lapse of over twenty-five years, seeking to renew it. As well might the dealer in "London Nourishing Stout" repeat the attempt made by him. It was mainly upon this ground that the court below, after an argument lasting the greater part of two days, dismissed the complainants' bill.

II. But even if it were true that the appellants might have obtained a trade-mark in the letters "A. C. A.," under certain circumstances (which can not be properly conceded, even for the purpose of argument), it would only be as used by them, and there has been no infringement on the part of the defendants.

The basis of the action is deceit. As was said by Lord Langdale in Croft *vs.* Day: "Chancery protects trade-marks upon the ground that a party shall not be permitted to sell his own goods as the goods of another;" or, as it is expressed by his Honor Mr. Justice Strong, in Canal Co. *vs.* Clark, 13 Wall., page 322:—

"This will be manifest when it is considered that in all cases where rights to the exclusive use of a trade-mark are invaded, it is invariably held that the essence of the wrong consists in the sale of the goods of one manufacturer or

vendor, as those of another; and that it is only when this false representation is directly or indirectly made, that the party who appeals to a court of equity can have relief. This is the doctrine of all the authorities."

The leading case on this branch of the subject is Partridge *vs.* Menck, 2 Sand. Ch., 622, where Chancellor Walworth elaborately compared the two labels and stated that he was not satisfied "that the label used by the defendants will probably have the effect to deceive and impose upon those who are in the habit of buying and using the matches made and sold by the complainant, by inducing them to believe they are of his manufacture." The leading case in England is the Leather Cloth Company *vs.* American Leather Cloth Company, 11 H. of L. C., 523, in which Lord Cranworth said (page 534): "The defendants' trade-mark is certainly not the same as that used by the appellants; but is it only colorably different? I think it is so different as to make it impossible to say that it is substantially the same. No general rule can be laid down as to what is or is not a mere colorable variation. All which can be done is to ascertain in every case, as it occurs, whether there is such a resemblance as to deceive a purchaser using ordinary caution. Here the differences are so palpable that no one can be deceived. The plaintiffs' trade-mark, if trade-mark it is to be called, is contained in a circle. The design of the defendants is a semicircle mounted on a parallelogram. It is said that the defendants' goods may be so rolled as to expose only the semicircle, and so lead to the belief that the device in its integrity is a circle. I answer, '*vigilantibus non dormientibus leges subserviunt.*' There might, however, be some force in the observation if the upper half was the same as, or even if it closely resembled the upper part of the plaintiffs' device; but this is not so. The name of the company is different. The word 'Crockett' is prominently exhibited twice in the

plaintiffs' upper half, not once in the defendants'. No one taking the trouble to read the two, can say that he would be deceived. The gist of the complaint in all these cases is that the defendants, by placing the plaintiffs' trade-mark on goods not manufactured by the plaintiffs, have induced persons to purchase them, relying on the trade-mark as proving them to be of the plaintiffs' manufacture. This necessarily supposes some familiarity with the trade-mark; but to any one at all acquainted with the plaintiffs' trade-mark in this case, I can hardly think that, even on the most cursory glance, there could be any deception.

"Each of the trade-marks, it is true, as well that of the plaintiffs as that of the defendants, contains within its periphery an eagle, or that which we must suppose was meant to represent an eagle; but one does not at all represent the other. The rest of the device, if it is to be called a device, consists merely of words intended to indicate the nature or quality of the article, the place of its manufacture, and the names of its manufacturers. No one reading the two could fail to see that they differ in all these particulars. The letters are all printed in very large type, and the diameter of the circle which contains them is above six inches, so that there can be no difficulty in deciphering what is stamped.

"I mention this, because if, instead of occupying the large space, the whole had been engraved on a stamp of the size of a sixpence or a shilling, so as not to be capable of being read without a magnifying-glass, or even without close examination, the case might have been different. A person purchasing leather cloth so stamped might, perhaps, fairly say, 'I did not attempt to decipher what was stamped on the article which I bought; I saw it had on it what appeared to be and what I could not discover not to be the plaintiffs' stamp, and therefore I took it for granted it was the produce of their manufactory.' But this can not apply to a case like that now before us, where that which is called

a trade-mark is, in truth, an announcement of the names of the manufacturers, the style of the firm, and the place of the manufacture in large letters, not only capable of being easily read, but intended to be read by all to whom the goods are exposed for sale.

"The object of the plaintiffs in the use of their device was to announce (I do not say unfairly or dishonestly to announce) to purchasers that they were buying goods manufactured at what was the original International Leather Cloth Company at Westham, carried on by the Messrs. Crockett. I do not think that a firm using such a device by way of trade-mark can say that a rival manufacturer is guilty of an infringement when he has adopted a device differing in shape, and announcing in letters equally large and legible, the name of a different firm manufacturing goods at a different place."

Lord Kingsdown said (page 538), "What is it that the defendants have actually done, and in what respect have they infringed the rights of the plaintiffs?

"That depends upon the question how far defendants' trade-mark bears such a resemblance to that of the plaintiffs as to be calculated to deceive incautious purchasers.

"If we compare the statements of the two trade-marks, there is no statement in the one which can be considered as identical with or indeed as resembling the other, except this: that both profess to sell leather cloth, a profession which both have a right to make. The defendants describe their article as leather cloth, manufactured by their manager, late with J. R. & C. P. Crockett & Co., clearly showing that they do not pretend that their cloth is manufactured by that firm or by any persons who have succeeded in business to that firm. The plaintiffs, on the other hand, describe their article as 'Crockett & Co.'s tanned leather cloth, patented January 24th, 1856, J. R. & C. P. Crockett, manufacturers.' Neither in the description of the article to be sold, nor of the makers, is there anything to be found

which could induce any person of common sense to suppose that in buying defendants' goods he was buying what had been manufactured by the plaintiffs.

"But it is said that in the form of the stamp, the adoption of the American eagle as an emblem, and the collocation of the words J. R. & C. P. Crockett & Co., there is an obvious imitation of the plaintiffs' mark, likely to lead to a mistake of the defendants' goods for the goods of the plaintiffs.

"On comparing the two stamps there does not appear to me to be any such general resemblance as is relied on, nor do I think there was, in truth, any intention to produce such result, though the intention is immaterial if the result be produced."

And the Lord Chancellor (Lord Westbury) added (page 546): "In the first place, the plaintiffs in their advertisements describe their manufacture as 'Crockett & Co.'s leather cloth;' the sole denomination applied by the advertisement of the defendants is 'leather cloth' (which was perfectly well known, independently of 'Crockett & Co.'s cloth). Further, the plaintiffs state not only that they sell and make Crockett & Co.'s leather cloth, but that it is 'tanned leather cloth,' an allegation to which there is nothing whatever similar or corresponding in the advertisement of the defendants. Further, the appellants represent that their article is the manufacture of J. R. & C. P. Crockett, for they are described as the manufacturers. Not only is there nothing correspondent to that in the advertisement of the defendants, but what the defendants assert is simply not that it is manufactured by Crockett & Co., but that it is manufactured by their manager, who was formerly in the employ of J. R. & C. P. Crockett & Co. If, therefore, these are regarded as being, what in reality they are, representations of two different articles, it is impossible to say that the representation which is contained in the advertisement of the one contains, either identically or substantially, the representations which are contained in the advertise-

ment of the other. And if you drop the statements in words, and take only the symbols employed in the one case and in the other, it will be found that they differ entirely in their character and effect in the two cases. In the one case it will be seen that you have the eagle with his wings fully extended; in the other case you have that which is called, I believe, in America, the 'screaming eagle,' armed with his talons, and perfectly different in character and shape from the other. There is also another, which seems to be intended to be a representation of a sparrow-hawk, which again is very different from the others.

"I have added these few observations for the purpose of showing not only that the ground which I took in the court below was a ground sufficient for my decision, but, also, that the grounds which have been now superadded by my noble and learned friends, and which I regret that I did not more fully consider and adopt as the basis of my former judgment, would warrant the same conclusion, and would, perhaps, have tended still more in favor of the defendants."

Compare the appearance of the labels as given in the report of the above case of 11 H. of L., page 526, and the similarity will be found much greater than in the present case. It will be noticed that the decision in the above case was upon the 23d of May, A. D. 1865, while the cases mainly relied upon by counsel for appellants as establishing the fact that the use of letters alone will entitle them to a trade-mark, such as Millington *vs.* Fox, 3 M. & C., 338; Hall *vs.* Barrows, 4 DeG. J. & Sm., 150, and Kinahan *vs.* Bolton, 15 Ir. Ch., 75, were all decided before that time. Millington *vs.* Fox was decided in 1838; Hall *vs.* Barrows in 1863, and McAndrew *vs.* Barrett in 1864. The two last cases were both heard and decided by Lord Westbury, who was then Lord Chancellor, and he also sat upon the hearing of the Leather Cloth Case, two years later, as Lord Chancellor. The remarks then made in the Leather Cloth case

were made with a full knowledge of the prior decisions; in fact, all of the most important, including those above mentioned, were either referred to in the argument of counsel, or by the Lords who decided the case. A careful reading of these cases will show beyond question that the marks in those cases were used to indicate a kind of goods, not a quality.

An inspection of the labels used upon their grades of ticking by the parties to this controversy (pages 14 and 15, Appellants' Paper), shows the most manifest differences. It may be confidently affirmed that in no respect are they similar, even, except in the use of the letters "A. C. A." In appellants' case, even there the letters are comparatively small and red; while in appellees' label they are black and quite large. The differences in the other parts of the labels are more marked; in fact, they are entirely unlike. One is "Amoskeag Manufacturing Co., A. D. 1836, Power Loom, Yrd ———, A. C. A., Manchester, N. H.," surrounded by a peculiar border. The other is "Omega (in large letters) A. C. A. Ring Twist," surrounded by a border totally different from the other.

The claim of the plaintiffs, then, comes down to this:— The goods so marked have come to be spoken in the slang of the trade as "A. C. A.'s," and although no one who has ever seen the one kind could mistake the other for it, yet there might be a mistake to the ear, though not to the eye. This is to forget the object and nature of a trade-mark, which is, as the name indicates, a *mark*, and one which has no existence in law, except by reason of its use upon particular goods, and in connection with them, and them only.

III. No such masterly exposition of the whole law relating to trade-marks has been given in any of the late cases, as in The Singer Sewing Machine Company *vs.* Wilson, L. R., 2 Ch. Div., page 434, by Sir George Jessel, Master of the Rolls, probably England's greatest living

judge. His decision was affirmed by the Court of Appeals, Lords James, Mellish and Baggalay, L. R., 2 Ch. Div., page 451, and although reversed by the House of Lords, it was, as is shown by the synopsis of the case, in appellants' brief of argument, merely on the ground that the question was one of evidence, and the House of Lords remitted the case to be heard anew. It was upon this ground, also, that Vice-Chancellor Bacon decided the case of Singer Manufacturing Company *vs.* Long, (Appellants' Paper-book, pages 35–38), saying that the defendants had put plates on the machines intending to deceive the public. It is believed that the review of the cases by the Master of the Rolls and the Lords Justices gives a better exposition of the law than can be found in the opinions in the appeal to the House of Lords, or any subsequent cases.

"The view I take of the law is that nothing can be better established, and nothing ought to be otherwise than fully established in a civilized country than this, that a manufacturer is not entitled to sell his goods under the false representation that they are made by a rival manufacturer. That is the principle; the difficulty has arisen in determining what amounts to such false representation."

"The cases which have come before the courts may, I think, be conveniently divided into two classes. The first class, which is the more numerous one, consists of cases where the goods manufactured are distinguished by some description or device in some way or other affixed to the article sold. It may be, as I said before, descriptive—that is, may consist of a name or names, or a lengthy description, consisting of names with superadded words, and that description may be either affixed to or impressed upon the goods themselves, by means of a stamp or adhesive label, or it may be made to accompany the goods by being impressed or made to adhere to an envelope or case containing the goods. An illustration of the first class would be the common trade-mark, which is either the name or the

image of some known or unknown thing, actually impressed upon or worked into the material, or made to adhere to the surface of the material; or it may not be what is commonly known as a trade-mark, a distinguishing mark which, perhaps, to a legal mind, would be a trade-mark, but some form of the material itself.

"I will give as an illustration a case which was recently before me, where, on some cloths which were exported abroad, it was said that certain lines in the hem or fringe of the cloth, of various colors, were understood, in the *Brazils* in the one case, and in *Turkey* in another case, to show that they were the goods of a particular manufacturer. All that comes under the general notion of a trade-mark, which is a mark which shows that the goods are made by some particular maker.

"Sometimes you do not find anything put on the goods themselves, the reason often being that the goods are not capable of it; for instance, when there are liquids upon which of course you can not put a mark, and therefore a mark is put on the bottle containing the liquid, or on the cork which is in the bottle and helps to retain the liquid. There are again true trade-marks, whether affixed in the shape of a label on a bottle of liquids, or in the shape of a device on the cork, or in case of other goods, such as cigars, affixed to the box which contains the cigars, or the string which encircles them, they are in some way or other attached to the goods and go along with the goods on sale. That I call the first class.

"Now as to this class, it is quite immaterial that the maker of the goods to which, what I will call for the sake of shortness, the trade-mark as affixed, did not know that it was a trade-mark, and had not the slightest intention of defrauding anybody. He must not put as a mark on goods, even though he intends to establish it as his own trade-mark, that which is the known trade-mark of other people, and he would be restrained by injunction though he thought he himself had designated the trade-mark, and

bona fide intended it to designate goods of his own manufacture. And the reason is obvious, because the goods pass from hand to hand, and though he may act with the utmost *bona fides*, yet the ultimate purchaser might believe that they were the real goods—that is to say, that they were manufactured by the person entitled to the original trade-mark. Therefore in that case knowledge that he is doing anything wrong is unintentional even to the maker. * * * What do we mean by saying that the trade-mark has been taken? That again has given rise to a great variety of decisions, but the principle, I think, is clear. A trade-mark to be taken need not be exactly copied; it need not be copied even with slight variations, but it must be a substantial portion of the trade-mark. It has sometimes been called the material portion, but that means the same thing. It means the essential part of the trade-mark, and it is sometimes a very difficult thing for a judge to say what is the essential portion of it. As to that, no doubt authorities are useful. It must depend on the nature of the articles, and on the nature of this trade-mark also. * * * * * * * *

"The second class of cases are cases of a totally different character; they are always cases of fraud. They are cases where the defendant, without putting any trade-mark at all on his goods, or putting a trade-mark which is admittedly different in substance from the trade-mark, if any, of the plaintiff on the goods, has represented the goods as being goods manufactured by the plaintiff; then, again, the court has to try the question of representation. What the defendant has said or done must amount to a representation that the goods to be sold are the goods of the plaintiff, or that they are manufactured by the plaintiff. What amount of representation will be sufficient for that purpose must again depend, of course, on the facts of each particular case; but there are one or two things which, I think, may guide the court in arriving at a conclusion.

First, has the representation or question been accompanied by a trade-mark on the goods? If there is a distinct and obvious trade-mark, of considerable size, and which ought to be noticed by any reasonable purchaser, showing that the goods in question are goods manufactured by the man who sells them, it is a very strong evidence in favor of his *bona fides*. It seems to prove that he could not have intended to deceive, or he would not have taken so much trouble to have marked his goods in a plain and easily recognizable manner, as being manufactured by himself.

"Again, if he tells the purchaser in plain English that the goods, however described, are in fact manufactured by himself, and makes this statement again in an open and full manner—that is, he does not use a small type for the one statement and a large type for the other, and does not do anything which shows an intention to deceive, but openly and fairly states all the circumstances, then it appears to me you have a very strong indication to show that he did not intend to deceive, and that no reasonable person ought to have been deceived, although, if he had used one or more of the terms he has used without that explanation, he might have been liable to a charge of misrepresentation."

His Honor then goes on to remark, however, that if, knowing the fact, he conveys the impression to the purchaser that he is selling the goods of another, that is a fraud, and not only a legal but a moral fraud.

Now it is obvious that the present case, in view of what has been heretofore said, as to the letters, "A. C. A." being only a mark of quality, falls under the second class, if any. And here the evidence of fraud of any kind is totally lacking. Not only are the marks entirely distinct, but no one could possibly unless mentally as well as color blind be deceived upon looking at the respective marks of these parties. To enlarge upon this would only repeat in another form what has been heretofore said.

The cases cited by plaintiffs establish no contrary doctrine.

In Motley *vs.* Downman, 3 M. & C., 1, the tin plates manufactured at the particular establishment were all marked "M. C.," and in Millington *vs.* Fox, *id.*, 338, all of the steel of a particular kind of manufacture was marked "I. H.," and the case went on the use of the name manufacturer.

In Hall *vs.* Barrows, 4 De G., J. & S., 150, the letters "B. B. H." were surmounted by a crown, but, apart from this, the only iron marked with letters was so marked. In Kinnahan *vs.* Bolton, 15 Irish Ch., 75, the claim of the counsel for plaintiffs, in respect to the letters "L. L.," was, that "these letters fulfill the precise object of a trade-mark; they mark the particular product of this particular firm; they do *not* designate any particular class or quality of whisky."

In McAndrew *vs.* Bassett, 4 De G., J. & S., 380, the only question was whether the name "*Anatolia*" was not *publici juris*.

In Ainsworth *vs.* Walmsley, L. R., 1 Eq., 518, there was actual fraud in the endeavor to palm off the goods of one as those of another. In Seixo *vs.* Provezeande, L. R., 1 Ch., 192, there was such a simulation of all the marks as to show a design to cheat, and there was proof of overt acts. The same is true of the case of Lee *vs.* Haley, L. R., 5 Ch., 155; and of Gillott *vs.* Esterbrook, 48 N. Y., 374, and Boardman *vs.* Britannia Company, 35 Conn., 402. The last two cases are considered in Browne on Trade-marks (§§225–233), and even that author is of opinion that "no court in any country has ever solemnly decided that a naked numeral can constitute a trade-mark; and it is confidently believed that no court, upon calm deliberation, would so decide."

In Ford *vs.* Foster, L. R., 7 Ch., 60, it was ruled that the name "Eureka," though never employed except in connection with the name of the maker, could not be used by another manufacturer. Looking to what was decided, it will be seen that the stamp of the defendant was put in the same place; that the shirts were put up in the same

way—in parcels of the same size, and that these facts were not without weight.

The question is then discussed as to whether it would or would not be likely that the buyer would regard anything but the name "Eureka," and the Lords Justices thought not. Applying even this test to the present case, when it is remembered that the buyer of one grade of tickings of course buys the others also, and that the prominent feature of the compound name "Amoskeag A. C. A." is *Amoskeag*, and "A. C. A." is avowedly designed to recall it, it must be obvious that no such mistake could reasonably occur in its use. Had the plaintiffs, therefore, employed but the one label, and that one as a trade-mark proper, it is submitted that even upon the principles of Ford *vs.* Foster, there would be no infringement in the case.

The other cases cited contain nothing distinctive; but attention might be again called to Braham *vs.* Bustard, 1 H. & M., 447, in which the name "Excelsior" was protected upon grounds pertinent here. Wood, V. C., says:—"Again, the defendants urge that 'Excelsior' is merely a mark of quality, like superfine or superior, but there seems to me to be a double answer to this:—

"In the first place, the plaintiffs do not sell two or three qualities of soap, calling one of them 'Excelsior' and the others by some other names; they have only one quality, which they denominate 'The Excelsior White Soft Soap,' and there is nothing, except itself, with which to compare it. But in the second place the manner in which, as has been proved, this name is generally used in the market, shows that it is more like such names as 'Victoria,' 'Albert,' 'Eureka,' which are not names of quality, but simply arbitrary designations for sake of distinction."—Wood, V. C., Braham *vs.* Bustard, 1 H. & M., 447.

See further remarks heretofore cited, from Raggett *vs.* Findlater, L. R., 17 Eq., 29.

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